SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 453.

JOHN M. SLOAN ET AL., APPELLANTS,

vs.

THE UNITED STATES ET AL.

(19,104.)

No. 454.

JOSEPHINE MITCHELL, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,105.)

No. 455.

EMEIL PETERS, APPELLANT,

vs.

THE UNITED STATES.

(19,106.)

No. 456.

FRANK A. PETERS, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,107.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 26, 1904.

No. 457.

WALTER V. PETERS, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,108.)

No. 458.

JACOB PETERS, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,109.)

No. 459.

SARAH F. McCREARY, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,110.)

No. 460.

JENNIE M. ARNOLD, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,111.)

No. 461.

MITCHELL MONETTE ET AL., APPELLANTS,

vs.

THE UNITED STATES ET AL.

(19,112.)

No. 462.

CASSIE M. KARCH, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,113.)

No. 463.

THOMAS BARADA, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,114.)

No. 464.

MARY SAILORS, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,115.)

No. 465.

ARTEMESIA FROST, APPELLANT,

vs.

THE UNITED STATES.

(19,116.)

No. 466.

EDWARD KUHN, APPELLANT,

vs.

THE UNITED STATES.

(19,117.)

No. 467.

ETHEL KUHN RUTLEDGE, APPELLANT,

vs.

THE UNITED STATES.

(19,118.)

No. 468.

CHARLES FROST, APPELLANT,

vs.

THE UNITED STATES.

(19,119.)

No. 469.

CELESTINE B. KUHN, APPELLANT,

vs.

THE UNITED STATES.

(19,120.)

No. 470.

STELLA KUHN, APPELLANT,

vs.

THE UNITED STATES.

(19,121.)

No. 471.

PHILEMON H. FROST, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,122.)

No. 472.

LEONARD FROST, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,123.)

No. 473.

MAGGIE E. ROCKWELL, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,124.)

No. 474.

MITCHELL MONETTE, APPELLANT,

vs.

THE UNITED STATES.

(19,125.)

No. 475.

JOHN M. SLOAN, APPELLANT,

vs.

THE UNITED STATES ET AL.

(19,126.)

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

	Original.	Print
Caption	1	1
Record in John M. Sloan *et al.* *vs.* United States *et al.*, No. 174.	2	1
Amended bill of complaint.	2	1
Answer to amended bill of complaint.	12	7
Stipulation as to evidence in all the cases	32	18
Letter of H. B. Denman, superintendent, to W. P. Callen, agent, as to Indians in Nemaha county	34	19
Lists of allotments to Omaha tribe of Indians and other tribes.	35	19
Certified copies of annuity rolls	57	34
Certificate of Charles P. Mathewson to list of half-breeds allotted who had allotments before	79	53
Patent of Me-man-she-ha-ne.	85	57
Patent of Lewis Dick	88	59
Copy of census roll	91	61
Stipulation as to facts	92	62
Stipulation as to testimony of Thomas L. Sloan and William Springer	113	74
Stipulation as to testimony of Megratahe Grant	114	75
Stipulation as to testimony of John Grant and Antoine Cabney.	115	75
Stipulation as to testimony of Anna Cabana	117	76
Stipulation as to testimony of witnesses	125	81
Stipulation as to witnesses, &c.	128	83
Depositions for complainants	129	84
Testimony of Stephen J. Snyder	130	84
Anna Cabana	137	89
Mrs. Artemesia Frost	140	90
Antoine Cabana	169	107
William F. Springer	194	121
Charles P. Mathewson	209	130
Emily Campbell	214	133
Certificate of notary public	216	134
Correspondence from Interior Department	217	134
Correspondence from Interior Department	235	145
Copy of Omaha Indian allotments of 1871	282	170
Deposition of L. L. Frost	297	186
Deposition of Spafford Woodhull	305	191
Replication	316	197
Deposition of Artemesia Sloan Frost	317	198
Testimony of Carey La Flesche	322	201
Deposition of John T. Spencer	326	204
Deposition of Robert W. Furnas	346	215
Stipulation as to case of United States *vs.* John T. Spencer	366	227
Deposition of Thomas L. Sloan	369	228
Deposition of Charles P. Mathewson	371	230
Testimony of Thomas L. Sloan	374	232
Charles P. Mathewson	375	233
Prairie Chicken	376	234
Deposition of Charles P. Mathewson for defendants	381	236
Letter from Commissioner of Indian Affairs, December 14, 1874.	388	240
Correspondence from Interior Department	390	241
Genealogy of Sloan, Barada, and Peters, etc., families	397	245

	Original.	Print
Genealogical table of Omaha Indian claimants to allotments, suits pending in United States court	399	246
Memorandum opinion	401	247
Decree	422	260
Assignment of errors	423	260
Petition for appeal	427	262
Bond on appeal	429	263
Citation	430a	264
Record in Josephine Mitchell *vs.* United States *et al.*, No. 265	431	266
Amended bill of complaint	431	266
Answer to amended bill	440	271
Stipulation as to evidence of Walter Mitchell *et al.*	461	282
Stipulation as to evidence and facts	462	283
Replication	464	284
Decree	465	285
Assignment of errors	466	285
Petition for appeal and allowance of appeal	469	287
Bond on appeal	471	288
Citation	473	289
Record in Emiel Peters *vs.* United States, No. 266	474	290
Amended bill of complaint	474	290
Answer to amended petition	493	301
Replication	511	312
Decree	512	313
Assignment of errors	513	313
Petition for appeal and allowance thereof	516	314
Bond on appeal	518	315
Citation	520	316
Record in Frank A. Peters *vs.* United States *et al.*, No. 267	521	318
Amended bill of complaint	521	318
Answer to amended bill of complaint	531	324
Stipulation of facts and as to evidence of Frank A. Peters	550	335
Stipulation of facts and as to evidence of Michael Barada, &c.	552	336
Deposition of Frank A. Peters	586	358
Replication	588	359
Deposition of Frank A. Peters	589	360
Celestine Barada Kuhn	598	365
Fulton Peters	600	367
William Barada	604	369
Decree	609	373
Assignment of errors	610	373
Petition for appeal and allowance of appeal	613	375
Bond on appeal	615	375
Citation	617	376
Record in Walter Peters *vs.* United States *et al.*, No. 268	618	378
Amended bill of complaint	618	378
Answer to amended bill of complaint	627	383
Stipulation of facts	646	395
Replication	648	396
Decree	649	396

	Original.	Print
Assignment of errors	650	397
Petition for appeal and allowance of appeal	653	398
Bond on appeal	655	399
Citation	656	400
Record in Jacob Peters *vs.* United States *et al.*, No. 269	658	402
Amended bill of complaint	658	402
Answer to amended bill of complaint	667	407
Stipulation as to evidence of Walter Mitchell	686	418
Stipulation as to evidence of William F. Springer	687	419
Replication	689	420
Decree	690	421
Assignment of errors	691	421
Petition for appeal and allowance thereof	694	423
Bond on appeal	696	424
Citation	698	425
Record in Sarah F. McCreary *vs.* United States *et al.*, No. 362	699	426
Amended bill of complaint	699	426
Answer to amended bill of complaint	709	432
Replication	732	445
Decree	733	446
Assignment of errors	734	446
Petition for appeal and allowance of appeal	737	448
Bond on appeal	739	449
Citation	741	450
Record in Jennie M. Arnold *vs.* United States *et al.*, No. 363	742	451
Amended bill of complaint	742	451
Answer to amended bill of complaint	752	457
Stipulation as to evidence of Mitchell Monette *et al*	766	466
Stipulation of facts	767	467
Replication	769	468
Decree	770	468
Assignment of errors	771	469
Petition for appeal and allowance of appeal	774	470
Bond on appeal	776	471
Citation	778	472
Record in Mitchell Monette *et al. vs.* United States *et al.*, No. 364	779	474
Amended bill of complaint	779	474
Answer to amended bill of complaint	789	480
Stipulation of facts as to evidence	803	488
Stipulation of facts as to evidence of Mitchell Monette *et al.*	809	492
Stipulation of facts as to evidence of Alfred Hallowell	811	493
Deposition of Ellis Blackbird	813	495
Charles Robinson	820	499
Simeon Hallowell	825	502
Hiram Chase	828	503
Alfred Hallowell	833	506
Anna Cabana	841	511
Emily Campbell	848	516
Mitchell Monette	853	520
Stipulation as to evidence of Alfred Hallowell *et al.*	855	521

	Original.	Print
Deposition of William Provo	859	524
Julia Provo	867	529
Orrin Mitchell	879	539
William Hamilton	884	542
Replication	893	548
Stipulation as to evidence of Thos. L. Sloan	894	549
Deposition of David Monett	895	550
Thos. L. Sloan	912	562
Harrison McCauley	914	563
Frank La Flesche	920	566
Decree	936	575
Assignment of errors	937	575
Petition for appeal and allowance of appeal	940	577
Bond on appeal	942	578
Citation	944	579
Record in Cassie M. Karch *vs.* United States *et al.*, No. 365	945	581
Amended bill of complaint	945	581
Answer to amended bill of complaint	955	586
Stipulation as to evidence of Mitchell Monette *et al.*	969	595
Stipulation as to evidence of Simeon Hallowell	970	595
Replication	971	596
Decree	972	597
Assignment of errors	973	597
Petition for appeal and allowance of appeal	976	599
Bond on appeal	978	599
Citation	980	600
Record in Thomas Barada *vs.* United States *et al.*, No. 460	981	602
Amended bill of complaint	981	602
Answer to amended bill of complaint	998	612
Replication	1015	623
Decree	1016	624
Assignment of errors	1017	624
Petition for appeal and allowance of appeal	1020	626
Bond on appeal	1022	627
Citation	1023	628
Record in Mary Sailors *vs.* United States *et al.*, No. 461	1025	629
Amended bill of complaint	1025	629
Answer to amended bill of complaint	1041	639
Replication	1059	650
Decree	1060	651
Assignment of errors	1061	651
Petition for appeal and allowance thereof	1064	653
Bond on appeal	1066	654
Citation	1067	654
Record in Artemesia Frost *et al. vs.* United States, No. 462	1069	656
Amended bill of complaint	1069	656
Answer to amended bill of complaint	1081	663
Deposition of Thomas L. Sloan on behalf of complainant	1096	673
Replication	1100	675

	Original.	Print
Decree	1101	676
Assignment of errors	1102	676
Petition for appeal and allowance of appeal	1106	678
Bond on appeal	1108	679
Citation	1110	680
Record in Edward Kuhn *vs.* United States, No. 502	1111	681
Amended bill of complaint	1111	681
Answer to amended bill of complaint	1125	689
Replication	1144	700
Decree	1145	701
Assignment of errors	1146	702
Petition for appeal and allowance of appeal	1149	703
Bond on appeal	1151	704
Citation	1153	705
Record in Ethel Kuhn *vs.* United States, No. 503	1154	706
Bill in chancery (refiled)	1154	706
Answer to amended bill	1168	714
Replication	1187	725
Decree	1188	726
Assignment of errors	1189	726
Petition for appeal and allowance thereof	1192	728
Bond on appeal	1194	729
Citation	1196	729
Record in Charles A. Frost *vs.* United States, No. 504	1197	731
Bill in chancery (refiled)	1197	731
Deposition of Charles Frost	1211	739
Answer to amended bill	1214	741
Replication	1231	751
Decree	1232	751
Assignment of errors	1233	752
Petition for appeal and allowance of appeal	1236	753
Bond on appeal	1238	754
Citation	1240	755
Record in Celestine B. Kuhn *vs.* United States, No. 505	1241	757
Amended bill of complaint	1241	757
Depositions of E. A. Wiltse *et al.*	1250	762
Answer to amended bill of complaint	1254	764
Replication	1274	776
Decree	1275	776
Assignment of errors	1276	777
Petition for appeal and allowance of appeal	1279	779
Bond on appeal	1281	780
Citation	1283	780
Record in Stella Kuhn *vs.* United States, No. 506	1284	782
Amended bill of complaint	1284	782
Answer to amended bill of complaint	1292	787
Replication	1310	798
Decree	1311	798
Assignment of errors	1312	799
Petition for appeal and allowance of appeal	1315	800

	Original.	Print
Bond on appeal	1317	801
Citation	1319	802
Record in Philemon H. Frost *vs.* United States *et al.*, No. 507	1320	804
Amended bill of complaint	1320	804
Answer to amended bill of complaint	1330	810
Stipulation of facts as to occupancy	1351	823
Deposition of John M. Wickersham	1354	825
Replication	1361	830
Decree	1362	830
Assignment of errors	1363	831
Petition for appeal and allowance of appeal	1366	832
Bond on appeal	1368	833
Citation	1370	834
Record in Leonard L. Frost *vs.* United States *et al.*, No. 508	1371	836
Amended bill of complaint	1371	836
Answer to amended bill of complaint	1381	842
Stipulation as to evidence of Simeon Hallowell *et al*	1403	855
Stipulation as to evidence of Mahashahana Hallowell *et al*	1405	856
Replication	1407	857
Decree	1408	858
Assignment of errors	1410	858
Petition for appeal and allowance of appeal	1412	860
Bond on appeal	1414	861
Citation	1416	862
Record in Maggie E. Rockwell *vs.* United States *et al.*, No. 509	1417	863
Amended bill of complaint	1417	863
Answer to amended bill of complaint	1422	866
Stipulation as to evidence of Thos. L. Sloan	1442	878
Replication	1444	879
Decree	1445	880
Assignment of errors	1447	881
Petition for appeal and allowance of appeal	1449	882
Bond on appeal	1451	883
Citation	1452	884
Record in Mitchell Monette *vs.* United States, No. 574	1454	886
Amended bill of complaint	1454	886
Answer to amended bill of complaint	1464	892
Stipulations of facts and as to testimony	1477	900
Replication	1479	901
Decree	1480	902
Assignment of errors	1482	902
Petition for appeal and allowance of appeal	1484	904
Bond on appeal	1486	905
Citation	1488	906
Record in John M. Sloan *vs.* United States *et al.*, No. 579	1489	907
Amended bill of complaint	1489	907
Answer to amended bill of complaint	1498	912
Stipulation of evidence	1515	923
Deposition of William Springer	1519	925
Replication	1523	927

	Original.	Print
Deposition of Thomas L. Sloan	1524	928
Decree	1527	930
Assignment of errors	1528	931
Petition for appeal and allowance of appeal	1531	933
Bond on appeal	1533	934
Citation	1535	935
Precipe for transcript	1536	936
Certificate of clerk	1542	943

1 Pleas before the Honorable W. H. Munger, United States district judge for the district of Nebraska, sitting in the circuit court of the United States for the district of Nebraska, and before the Honorable O. P. Shiras, United States district judge for the southern district of Iowa, assigned to and sitting in the circuit court of the United States for the district of Nebraska, for the eighth judicial circuit, at the May, 1902, term thereof.

2 Be it remembered, that on the 19th day of April, 1901, amended complaint was filed in said case, which said amended complaint is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants, *vs.* THE UNITED STATES OF AMERICA, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.	No. 174, "T. "Amended Bill of Complaint.

Comes now the complainants and show to the honorable court as follows:

That your orators are the heirs at law of Margaret Sloan, deceased, the original complainant herein, who during her lifetime was a member of the Omaha tribe of Indians in the State of Nebraska. That said Margaret Sloan was the daughter of Michael Barada or Michael Berda as he was sometimes designated, a white man and Taegleha Hacienda, an Indian woman of the full blood and a member of the Omaha tribe of Indians. That said Margaret Sloan and her parents maintained their domicile with said Omaha tribe and were fully recognized as members of said tribe by the United States of America and the members of said tribe and was admitted to and participated in the benefits as other members of said tribe.

Further complaining your orators say that on the 16th day of March, A. D. 1854, a certain treaty was entered into by and between
3 the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof they received their present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including Margaret Sloan and her children. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large, vol. 10, page 1043, to which for greater certainty your orators refer.

And your orators further show that on the 6th day of March, A. D. 1865 another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large vol. 14 page 667 to which for greater certainty your orators beg to refer.

And further showing your orators say that on the 7th day of August A. D. 1882 an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person under eighteen years of age one sixteenth of a section. That all allotments should be
selected by the Indians, heads of families selecting for their
4 minor children and the agent selecting for each orphan child.
All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large, vol. 22, page 341 to which for greater certainty your orators refer.

Your orators further show that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act in December 1884 and at subsequent times since. That said Margaret Sloan made selection of land prior to the passage of the act of Congress of August 7th, 1882 and was occupying and farming the N. ½ of N. E. ¼ of section 20, township 24 N. range 8 east of the sixth P. M. in Nebraska, and the S. W. ¼ of N. E. ¼ and the S. E. ¼ of the N. W. ¼ of section 35, township 25 N. range 7 east of the 6th P. M., in Nebraska. That such selection was made as the head of a family and amounted to one hundred and sixty acres that the land at the time of its selection was raw, unbroken, unimproved and unclaimed land. That there was no prior claimant, and all improvements of every character consisting of breaking the land, building houses, barns, fencing, sheds, digging well, have all been done by the labor or cost of said Margaret Sloan. That said improvements have cost more than fifteen hundred dollars. That said lands have not at any time been occupied, improved nor farmed by any person claiming adversely to said Margaret Sloan.

Your orators further state that said Margaret Sloan was a member of the Omaha tribe by blood and descent by recognition as such by both the tribal and governmental authorities, and according to
the customs, rules and regulations of the Omaha tribe of
5 Indians. That such relationship and membership was never
terminated. That application for the allotment of said land has been refused Margaret Sloan by the Department of the Interior.

That said Margaret Sloan was a resident upon a part of the land at the time of the passage of the act of Congress of August 7, 1882 and that said land had been selected by her at the direction of the Indian agent and the councilmen of the tribe. That she was further recognized as a member of the tribe by the payment to her of annuity money, by the use of saw mill, grist mill, shops erected and maintained for the exclusive use and benefit of members of the tribe.

Your orators further say that on the 3rd day of March, A. D. 1893 an act of Congress was passed amending or extending the act of August 7th 1882 providing that with the consent of the Omaha tribe of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893 but increased allotments were provided from the residue land after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council May 1899 and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the
6 claimants. That the S. W. ¼ of N. E. ¼ of section 35 was assigned to Poncasa Grant and the S. E. ¼ of N. W. ¼ of section 35 assigned to Megratahe Grant. That trust patents therefor naming the United States as trustee have issued in the names of the parties dated April 11th, 1900. That said Poncasa Grant received an allotment under the act of August 7th 1882 and the present allotment is additional. That said Poncasa Grant died about the year 1895 without issue, and unmarried and her sole heir was her father Frank Grant. That said Frank Grant died May 1900 allottee of 160 acres under the act of 1882 and the heirs to his estate are Megra-ta-he Grant, John Grant and Charles Grant, the last named being a minor. That because of the rights or title acquired by these parties to the land in controversy since the filing of this cause they have become necessary parties.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land and to place in possession the allottee or lessee, and that he threatens to place into possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainants who are now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land in

controversy and his threats that he will remove your orators from the land make him a necessary party to this suit.

And your orators further show to your honors that by an act of Congress approved the 15th day of August, 1894, it was pro-
7 vided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute, or defend any action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305 which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator- begs to refer.

Your orators further state that the defendant The United States of America claims that by virtue of the 4th art. of the treaty of March 6th 1865, it was provided that the assignment be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood "including their half breed and mixed blood relatives now residing with them," and the defendant claims that your
8 orators and their ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your orators admit that they and their ancestors were temporarily absent from the reservation at the time, but claim that such absence did not deprive them of the right of residence on the reservation nor the rights of allotment under the treaty of March 6th, 1865, nor their rights to allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871, contained names of numerous half and mixed

bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to; that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent, the superintendent, nor at the time of the approval of the Secre-
9 tary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation, but who at all times and at the time of the treaty of March 6th, 1865, and ever since resided away from the reservation.

Your orators further state that no new rights were acquired under the treaty of March 6th. 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your orators further state that the defendant The United States claims that the complainants or their ancestors have received allotments of land under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotment under the policy of the Indian office neither the complainants nor Margaret Sloan their ancestors are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your orators admit that their ancestors received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by her nor given to her in consideration of the relinquishment of any other right than those to which she was entitled on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th, 1830, sums of money, which were accepted in consideration of a relinquishment to the United
10 States of all of their interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66 of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March 1865, and the subsequent act of Congress of August 7th, 1882; that your orators have not in any manner assigned or relinquished their right or claim to the benefits

under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Government nor by the enactment of any law authorized these complainants or their ancestors, or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of this tribe has been accepted or approv*al* by the United States or any of its officers.

Wherefore your orators show to your honors that they are without a remedy at law and remediless in the premises unless relieved by your honor in this court of equity and they therefore pray the aid of the court in the premises and that said defendants, The United States of America, Megratahe Grant, John Grant and Charles Grant, minor by his next friend Megratahe Grant may answer your orators' bill but without oath, answer under oath being expressly waived. That it be ordered and decreed that the patents issued to Pancasa Grant and Megratahe Grant are null and void and that the selection as made by Margaret Sloan is prior and superior
11 to their claim and is her allotment, and that she and her heirs are entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orators further pray for a preliminary order of injunction against the defendants Charles P. Mathewson. Megratahe Grant, John Grant and Charles Grant enjoining and restraining each of them, their agents and employees from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your orators the most gracious writ of subpœna to be issued under the seal of this court directed to the United States of America, Megratahe Grant, John Grant and Charles Grant, minor by his next friend Megratahe Grant, therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainants.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed Apr. 19, 1901, Geo. H. Thummel, clerk.

12 Thereupon afterwards, to-wit: on the 2nd day of July, 1901, answer was filed in said case, which said answer is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants, *vs.* THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.	No. 174 "T." Answer to Amended Bill of Complaint.

The answer of the United States of America, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, defendants, to the amended bill of complaint of John M. Sloan, Artemesia Frost, and Thomas L. Sloan, complainants.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer, say:

1. These defendants deny that Margaret Sloan, the maternal ancestress of the complainants was a member of the Omaha
13 tribe of Indians, in the State of Nebraska, and further aver that Margaret Sloan's original name was Margaret Barada a supposed daughter of Michael Barada or Michael Berda, who had intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, but these defendants are not advised whether she was of Omaha Indian blood or the blood of some other Indian tribe, and therefore leave the complainants to their proof in that regard. But these defendants do aver that Michael Barada the supposed father of Margaret was a free born white man of French nationality, and a citizen of the United States, and that Margaret Barada took the status of her father and thereby became and was a citizen of the United States and was not a member of the Omaha tribe of Indians; and the defendants deny that Margaret Sloan and her parents or either of them ever maintained a domicile with the Omaha tribe of Indians, or were recognized as members of said tribe, either by the said tribe of Omaha Indians or by the United States of America, and deny that they were admitted to or were participants in the benefits of said Omaha tribe of Indians.

2. The said Margaret Barada, the maternal ancestress of the complainants was born in 1811, and lived in the city of St. Louis with her parents until the year 1854. Her father Michael Barada being a Frenchman spoke the French language, and Margaret learned to

speak both French and English, but neither of them ever spoke the language of the Omaha Indian tribe.

3. On July 15, 1830, a certain treaty was concluded between the United States and certain Indian tribes, including the Omahas (7 U. S. Statutes at Large, 328) the purpose and object of which was to provide for their mixed blood claimants and to remove said claimants from the tribe, and by the (10) article of which
14 treaty certain lands were set apart for said half breeds, and by which the President of the United States was authorized to assign portions of said lands to said half-breeds to be held by him or them in fee simple, and that subsequently by an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) sec. (5) p. (4) the President was authorized and required to cause the said lands referred to in article (10) of the treaty of 1830 to be surveyed and allotted to the persons entitled to the same in fee simple, in such manner and under such rules and regulations as he might prescribe; that in the meantime Margaret Barada being a half-blood Indian woman intermarried in the city of St. Louis where she still continued to live with Thomas Sloan who was a free born white man of Irish nationality and a citizen of the United States and that said Margaret Sloan and her husband in the year 1857, learning of the allotments of land to be made under the act of 1854 pursuant to article (10) of the treaty of 1830, *supra*, went upon the said land so reserved under the treaty of 1830, *supra*, and commonly known as the Nemaha reservation, and claimed an allotment of land; that under the provisions of article (10) of the said treaty of 1830 and the act of Congress of 1854, *supra*, an allotment was made to Margaret Sloan, and on the 10th day of September, 1860, there was issued to Margaret Sloan patent No. 128 for the south half of section (10) township (3), north range (16) that by the acceptance of the allotment of land and the patent therefor, the birthright claim of Margaret Sloan to any further allotment of land became extinguished, and that it then was and ever since has been a rule of the Department of the Interior that when half-breeds accepted of an allotment of and patent for lands under the provisions of said treaty of 1830 that such persons thereby extin-
15 guished their claims to further allotments of lands, and thereby extinguished their claims to any further allotment or other benefits of the Omaha tribe of Indians. Such has been and is the policy and law of the United States in its government and control of the Indian tribes, and that by reason of the premises Margaret Sloan was not entitled to have or to make a selection of lands or to claim an allotment of lands out of the present Omaha Indian reservation and was not entitled to claim, select or to have allotted to her the lands in the present amended bill of complaint described, and the present complainants are not entitled to make claim thereof as her descendants or heirs at law.

4. That in the year 1857 or '8 and after Margaret Sloan had received the allotment and patent for lands on the Nemaha reserva-

tion, the said Margaret Sloan and her husband Thomas Sloan went to the Omaha reservation where the said Thomas Sloan was temporarily employed by the Government to take charge of a mill then and there being constructed, but when the said Government employment terminated the said Thomas Sloan and Margaret Sloan returned to St. Louis and continued to reside there from about the year 1858 to 1879, either in the city of St. Louis or on the lands patented to the said Margaret on the Nemaha reservation.

5. These defendants in addition to the reasons heretofore stated why Margaret Sloan was not entitled to a selection and allotment of lands upon the Omaha reservation, to-wit: that she was not an Omaha Indian but took the status of her father, and that she had not been adopted into the Omaha Indian tribe as a member thereof, and whatever claim, if any she had as of mixed blood, became and was extinguished by the allotment and patent of her lands on
16 the Nemaha reservation, aver and say that Margaret Sloan was not a member of the Omaha tribe of Indians, and did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865 or the approval *of* the act of Congress of 1882; that by the terms of article (4) of the treaty of 1865 (14 U. S. Statutes at Large, page 667) the assignment of lands in severalty to the half or mixed blood relatives are expressly limited to the half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Margaret Sloan as she was at most but a half blood and was not then living with the Omaha tribe of Indians; that the provisions of section 5 of the act of Congress approved August 7, 1882 (22 U. S. Statutes at Large, page 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5 of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said Margaret Sloan was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865 or at the time when the said act of Congress of 1882 was approved:

That pursuant to article (4) of the treaty of 1865 the Omaha tribe of Indian- co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled
17 to allotments and selections, and which said schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, Janu-

ary 26, 1871, and which said schedule did not contain the names of Margaret Sloan or her descendants, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither Margaret Sloan nor any of her descendants were entitled to allotments or selections of lands on the Omaha Indian reservation.

6. These defendants further deny that the Omaha tribe of Indians recognized Margaret Sloan or her descendants as members of the tribe and den*ies* that she was recognized as a member of the tribe by the payment of annuity money or in any other matter or manner whatsoever, and to the contrary the defendants aver that the Omaha tribe of Indians and the United States *has* at all times denied her membership in the Omaha tribe of Indians, and den*ies* her right to share in the benefits of the tribe; and denied her right to the selection and allotment of lands on the Omaha Indian reservation.

These defendants further answering say: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters were complainants, and Robert H. Ashley and Henry Fontanelle and others being members of the Omaha tribe of Indians were respondents, said Margaret Sloan made claim that she was a member of the Omaha tribe of Indians and made claim that she had received annuity money.

18 It was agreed between the parties that the officer taking the testimony in said suit, should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court "that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or descendants of said parties so far as I know their names," and which said report is a matter of record in this court and binding upon the parties thereto, including these complainants.

7. These defendants further answering say: That after the act of Congress of August 7, 1882 (22 U. S. Statutes at Large, page 341) the said Margaret Sloan and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty

was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation with the hope and expectation of obtaining allotments of lands and that the said Margaret Sloan and her descendants did then and there make application to Alice C. Fletcher, the United States special allot-
19 ting agent for lands to be allotted to them in severalty on the Omaha Indian reservation and that Alice C. Fletcher as United States allotting agent, caused the claim of Margaret Sloan and her descendants to be investigated, and being of the opinion as the result of said investigation that Margaret Sloan and her descendants were not members of the Omaha tribe of Indians and were not entitled to allottment of lands upon the said reservation, *and* on April 28, 1884, reported the facts thereon to the Interior Department, and said department under date of May 9, 1884, ruled and determined that Margaret Sloan and her descendants were not members of the Omaha tribe of Indians, and were not entitled to have or receive allottments of lands on the Omaha Indian reservation and which judgment and finding still remains in full force and effect.

The defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Margaret Sloan and her descendants and other descendants of her father Michael Barada, to wit: William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof the Omaha tribe of Indians caused a petition to be prepared and transmitted to the Interior Department and the Commissioner of Indian Affairs acting upon the said petition and protest did under date of November 14, 1888, make his report of the status of said claims to the Secretary of the Interior, and requested authority to remove said persons including the said Margaret Sloan from the said reservation, and afterward on the 5th day of December, 1888, the Secretary of the
20 Interior directed the removal of Frank Peters, and others making claim under similar state of facts, including the said Margaret Sloan from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865 from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865 (14 Statutes 668) was made. (The 4th article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty.) That his name is not borne upon the duly certified roll — 1871. submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and
the allotments of their lands, in severalty to the members of
21 the tribe a number of mixed bloods from the old Nemaha
reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants and such others who may have been lawfully admitted into the tribe would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under the treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

9. These defendants further aver that the said Margaret Sloan and the other descendants of her father Michael Barada, in-
22 cluding Frank Peters, William Barada, Luke Sailors and Walter Peters failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs ordered and directed Robert H. Ashley, United States Indian agent, that he re-

quire Mr. Frank Peters and others of a like class including Margaret Sloan to remove from the Omaha reservation, and upon the failure so to remove, said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon Frank Peters, William Barada, Luke Sailors and Walter Peters, to leave the said reservation and that they informed said agent that they would not do so until compelled to do so by process of law or force, and under date of October 17, 1890, the United States Indian agent made the following report to the Commissioner of Indian Affairs regarding Margaret Sloan, Thomas L. Sloan that he did, "on the 14th day of October, 1890 give written notice to Thomas L. Sloan and Margaret Sloan to leave the Omaha reservation, under instructions of office order of August 27, 1890.

I would further say in explanation that the Omaha Indians in council on 7th day of October, discussed this matter with the Sloans and it was almost the unanimous opinion and wish that they be removed from the reservation the same as Peters and others. I am unable to find where the Sloans have any more right than the others mentioned, and take them to be of 'like class' as mentioned in yours of the 27th of August."

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington,
23 the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid to remove from the land of said reservation, said Frank Peters, Luke Sailors and Walter Peters and such others as were intruders thereon under facts similar to that existing in the case of Frank Peters and which included Margaret Sloan as she was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors and their families belong to a class of trespassers on the Omaha reservation and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

10. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of

Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontanelle, Wa-gae-pa, otherwise known as Ezra Fremont Wa-han-ga, John Springer, Nebraska, and twelve hundred others being
24 members of the Omaha tribe of Indians, were made defendants and in which said suit said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States for the district of Nebraska entered a decree against the complainants in said suit, and in favor of the defendants therein and which said judgment and decree dismissed the complainants' bill and which said judgment and decree *was* not appealed from, but remain in full force and effect.

11. These defendants further aver that afterward the said Margaret Sloan and Thomas L. Sloan endeavored to have themselves adopted into the Omaha tribe of Indians and to have themselves recognized by the Interior Department as members of the Omaha tribe of Indians, and to that end submitted to the department certain petitions purporting to be signed by certain members of the Omaha tribe of Indians; that under date of September 6, 1894, the department ruled that the said Margaret Sloan and Thomas L. Sloan should not be admitted to membership in the Omaha tribe of Indians, and accordingly so ordered, and in which order and opinion the department held as follows:

"Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure separate and distinct from their alleged rights as Omaha Indians by blood,
25 and that such alleged right is not necessarily a test for such adoption, there remains the right to admission by the free will and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seem to be in proper form and to express the desire of a majority of the members of the tribe that the persons in question shall be placed upon the rolls of the tribe, and be admitted to all the rights and privileges of other members thereof.

Besides the opposing petition hereinbefore referred to, the department is in receipt of recent information which shows that of the one hundred and fifty seven persons whose names appear on the six petitions presented with your letter, only seventy now favor the claimants; that eleven others have since assented to their adoption, making eighty-one in all now favorable; that twenty-four of the signatures thereon were not written by the parties whose names are given, nor was the use of their names authorized by them, that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women—neither of whom have any

voice in such matters; that one of the nine members of the council purporting to have signed one of the petitions did not sign nor authorize the use of his name, and, further, that there are about one hundred and eighteen male members of the tribe of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petitions in question, the facts presented seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe that the Sloans be not admitted to membership and it is so ordered.

26 In reference to that part of your report wherein you state that Thomas L. Sloan has held and improved a tract of land since 1881 or 1882, on the Omaha reservation, it would seem that he is doing so in defiance of any legal authority of occupation."

That after the above order and ruling of the department, the counsel for Margaret Sloan and Thomas L. Sloan applied to the department for reconsideration of the adoption case, and the department under date of November 17, 1896, re-affirmed this ruling and among other things therein said:

"It is not denied, nor has it ever been, that the Sloans, mother and son, are of part Omaha Indian blood. The tribe recognized them as such and made provision for them, with others, by the treaty of 1830, and in the opinion of the department, and the Omahas themselves, their claim- as such mixed bloods were extinguished by the lands given them under the terms of the tenth article of the treaty named.

* * * * * * *

The claims of Margaret and her son William E. were extinguished prior to the birth of Thomas L. It is nowhere alleged or claimed that the latter is the offspring of a mother of Indian blood, much more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claims of Margaret and Thomas L. are based upon their birthright as Omaha Indians and upon their alleged adoption in recent years by the tribe.

The birthright claim of Margaret has been extinguished. Thomas L. never had such a claim. Neither of them have any claim by adoption, never having been regularly, fairly or

27 properly adopted by the tribe, as was shown by department letter of September 6, 1894.

Notwithstanding that Mr. Breckenridge has advised the department by letter dated the 30th ultimo, of his withdrawal as attorney for the claimants, I have caused this review of the case to be made, and adhere to the opinion expressed in department letter of September 6, 1894, that the persons named have no valid, legal claims to membership with the Omaha tribe of Indians."

And defendants aver that the above ruling of the Department of the Interior established the fact that Margaret Sloan and her de-

scendants the plaintiffs herein, then were not and had not theretofore been members of the Omaha tribe of Indians, and the defendants aver that the said Margaret Sloan and her descendants, the plaintiffs herein, are not and never have been members of the Omaha tribe of Indians.

These defendants further aver that the preference right to select lands for allotment under the act of Congress, August 7, 1882 (22 U. S. Statutes at Large, 342) is confined by section (5) of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the treaty with the Omahas concluding March 6, 1865, and Margaret Sloan had not received and was not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof, the said Margaret Sloan did not have and could not acquire any such interest in the lands described in the amended petition as would descend to her heirs, to-wit, the present complainants.

These defendants further aver that the act of Congress of August 7, 1882, does not contemplate the making of allotments to
28 heirs, or the issue of patents to heirs for lands claimed to have been selected by their ancestors, neither can such allotment be made to or patent issued to the deceased Margaret Sloan; that under the act of 1882, as well as under the act amendatory thereof (22 U. S. Statutes at Large, 630) allotments of lands cannot be made to deceased persons but only to living persons, and that the present complainants can only claim allotment to land in their own right, and each of the present complainants have separate suits pending in which they claim for themselves separately the right to an allotment of lands distinct from and separate from the land described in the present amended bill of complaint.

13. These defendants for further answer say, that Margaret Sloan was not head of a family during any of the time she claims to have lived on the reservation, and hence was not entitled to claim by way of allotment, the 160 acres of land described in the amended bill of complaint, but her right to allotment, if any she had, would be limited under the law to 80 acres of land, and on this point the defendants further aver that the complainant, Thomas L. Sloan is a grandson of Margaret Sloan and is a married man, living in the town of Pender, State of Nebraska, and off from the Omaha reservation, and is not and was not at the time of the filing of the original bill herein, in any manner dependent on the said Margaret Sloan for support.

That the complainant John M. Sloan during said time was not living with, nor in any manner dependent on Margaret Sloan for support and did not and does not live on the Omaha reservation; that the other complainant Artemesia Frost is a married woman and has been for some thirty years past, and is not and was not
29 during said period of time living with or in any manner dependent upon Margaret Sloan for support, and that the

said Margaret Sloan did not have during said period of time any other children or other person dependent on her for support.

14. These defendants further aver that Margaret Sloan did not select for allotment, and did not make any improvements upon any of the lands described in the amended bill of complaint, but to the contrary aver that the pretended selection was made by Thomas L. Sloan, complainant, and whatever improvements were put upon any of said lands were so caused to be put thereon by the said Thomas L. Sloan in his own interest and behalf, with the hope and expectation that he might acquire an allotment thereof in the name of Margaret Sloan, but for his own use and benefit, while at the same time, he the said Thomas L. Sloan was claiming a right to an allotment of other and distinct lands in his own name as more particularly appears in the suit of Thomas L. Sloan (doc. T. No. 176) to which reference is hereby and herein made in support of this averment, and these defendants deny that said improvements were of the value of $1,500.

15. These defendants further aver that the lands upon which the improvements were so made by the said Thomas L. Sloan were and are as follows: the N. half of the N. E. quarter of section 20, township 24, north range 8 E., and which said land was reserved by the U. S. allotting agent, and so reserved by the Interior Department, pending this litigation, for the use of Margaret Sloan and her descendants in the event this court should decree and determine that Margaret Sloan or the complainants herein, were and are entitled to receive an allotment of land in behalf of the said Margaret Sloan, but these defendants further aver that the said Margaret
30 Sloan never occupied the said lands in her own right and was not entitled to select the said lands in her own right, and was not and is not entitled to an allotment of the same.

16. These defendants further aver that Margaret Sloan never lived upon or occupied the following lands in the amended petition described, to-wit: the S. W. quarter of N. E. quarter, and the S. E. quarter of the N. W. quarter of section (35) township (25) north range (7) E. and these defendants further aver that the lands in this paragraph of the answer described, were claimed and selected in 1893, by Frank Grant for his wife and daughter as follows, to-wit: the S. W. quarter of the N. E. quarter of section (35) township (25) north range (7) for daughter Poncasa Grant, and the S. E. quarter of the N. W. quarter of section (35) township (25) north range (7) for his wife, Me-gra-tah-e Grant, and that they had been in possession of the lands since the year 1893, and furnished evidence to the U. S. allotting agent that they were entitled to select and have allotted to them respectively, the said lands, and upon which said proofs the U. S. allotting agent thereafter made his official report to the Commissioner of Indian Affairs, that the said Grants were entitled to have the said lands allotted to them respectively, and which said allotments to the said Grants was approved by the Commissioner of Indian Affairs, and subsequently approved by the Secre-

tary of the Interior, and patents therefore were issued to the said Poncasa Grant and Me-gra-tah-e Grant respectively.

And these defendants further aver that the complainants herein did not have any prior or vested right to the land so patented to the said Grants, and that the said allotments to the said Grants and the said patents to the said Grants, were made in all respects in conformity to law.

31 17. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainants are entitled to the relief or any part thereof in the said complaint demanded. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
United States Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 2, 1901, Geo. H. Thummel, clerk.

32 Thereupon afterwards, to-wit:—on the 11th day of December 1901, stipulation was filed in said case which said stipulation is in words and figures following, to-wit:—

In the United States Circuit Court, District of Nebraska.

No. 174	Doc. "T."	Sloan *et al. v.* United States.
" 175	" "	Garry P. Meyers, *v.* United States.
" 176	" "	Sloan *v.* United States.
" 265	" "	Josephine Mitchell *v.* United States.
" 266	" "	Emiel Peters *v.* United States.
" 267	" "	Frank A. Peters *v.* United States.
" 268	" "	Walter V. Peters *v.* United States.
" 269	" "	Jacob Peters *v.* United States.
" 362	" "	McCreary *v.* United States.
" 363	" "	Jennie M. Arnold *v.* United States.
" 364	" "	Mitchell Monette *v.* United States.
" 365	" "	Cassie M. Karch *v.* United States.
" 460	" "	Thomas Barada *v.* United States.
" 461	" "	Mary Sailors *v.* United States.
" 462	" "	Artemesia Frost *v.* United States.
" 502	" "	Edward Kuhn *v.* United States.
" 503	" "	Ethel Kuhn Rutledge *v.* United States.
" 504	" "	Charles Frost *v.* United States.
" 505	" "	Celestine B. Kuhn *v.* United States.

No. 506 Doc. "T." Stella Kuhn *v.* United States.
" 507 " " Philemon H. Frost *v.* United States.
" 508 " " Leonard Frost *v.* United States.
" 509 " " Maggie E. Rockwell *v.* United States.

33

No. 574 Doc. "T." Mitchell Monette *v.* United States.
" 579 " " John M. Sloan *v.* United States.

It is hereby stipulated between the parties that any fact or matter agreed to under stipulations to be used as evidence, and all evidence taken in any one of above named cases, may be used by either party in each and all the other cases in so far as applicable, each party however reserving the right to object to such testimony in each case, on the ground of irrelevancy or immateriality.

Dated July 24, 1901.

THOMAS L. SLOAN,
Att'y for Complainant.
CHARLES E. CLAPP,
Of Counsel for Complainants.
JNO. L. WEBSTER,
Of Counsel for Defendants.
H. C. BROME AND
ANDERSON & KEEFE,
Attorneys for Complainants.

Endorsed: Filed Dec. 11, 1901, Geo. H. Thummel, clerk.

34 Thereupon afterwards, to-wit:—on the 11th day of February, 1902, letter was filed in said case, which said letter is in words and figures following, to-wit:—

W. P. Callen, U. S. agent.

AIR: I am informed that some of the Indians of your agency, who did not go on a hunt are scattered in different parts of the State. Some I hear are in Nemaha county. As it is all important that the whole tribe should be present at the coming payment, I wish you without delay to give me all the information you can in regard to their whereabouts.

Your ob't ser.,
H B. DENMAN,
Supt. In. Aff.

Omaha, N., Dec. 14th, '67.

(Endorsed:) Filed Feb. 11, 1902, Geo. H. Thummel, clerk.

35 Thereupon afterwards, to-wit:—on the 12th day of February 1902, list of allotments to Omaha tribe of Indians and other tribes was filed in said case, which said list is in words and figures following to-wit:—

DEPARTMENT OF THE INTERIOR, C. F. L.
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Oct.* 22*nd*, 1901.

I, W. A. Jones Commissioner of Indian Affairs, do hereby certify that the papers hereto attached, are true extract copies of the originals as the same appear on file or of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL.]

W. A. JONES,
Commissioner.

36 Description of the selections and allotments of land made for the half-breeds and mixed-bloods of the Omahas, Iowas and Ottoes, and Yancton and Santie bands of Sioux, in conformity with the stipulations of the 10th article of the treaty of Prairie du Chien of July 15th, 1830, and of the 5th (4th) section of the act of Congress approved July 31st, 1854, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, one thousand eight hundred and fifty-five, and for other purposes."

No. 1.	Township 4 N., Range 16 E.			
Lewis Neal.....	S. W. ¼ of N. W. frl. ¼ of section		20..	40
	S. E. ¼ of N. W. frl. ¼	"	20..	40
Patent sent to the Hon.	S. W. ¼ of N. E. frl. ¼	"	20..	40
James Craig, House	S. E. ¼ of N. E. frl. ¼	"	20..	40
of Representatives, De-	Lot No. 1	"	20..	40
cember 7th, 1860.	" No. 2	"	20..	34.50
	" No. 3	"	20..	25.50
	" No. 4	"	20..	37.90
	Lot No. 1	"	17..	6
	" No. 2	"	17..	3.30
				307.20

* * * * * * *

No. 3.	Township 4 N., Range 16 E.			
Susan Neal.....	N. E. ¼ of N. E. ¼ of section		19.....	40
	N. W. ¼ of N. E. ¼	"	19.....	40
Patent delivered to	S. W. ¼ of N. E. ¼	"	19.....	40
Hon. J. Craig, Janu-	S. E. ¼ of N. E. ¼	"	19.....	40
ary 14, 1861.	N. E. ¼ of S. E. ¼	"	19.....	40
	N. W. ¼ of S. E. ¼ of section		19.....	40
37	S. W. ¼ of S. E. ¼	"	19.....	40
	S. E. ¼ of S. E. ¼	"	19.....	40
				320

* * * * * * *

No. 6. Township 4 N., Range 16 E.

Mary Jane Barrida, alias Mary Paul.....	N. E. ¼ of N. E. ¼ of section	29.....	40
	S. E. ¼ of N. E. ¼	29.....	40
	S. W. ¼ of N. E. ¼	29.....	40
Patent delivered to Hon. J. Craig, January 14, 1861.	N. W. ¼ of N. E. ¼	29.....	40
	N. E. ¼ of N. W. ¼	29.....	40
	S. E. ¼ of N. W. ¼	29.....	40
	N. W. ¼ of N. W. ¼	29.....	40
	S. W. ¼ of N. W. ¼	29.....	40
			320

* * * * * * *

No. 11. Township 4 N., Range 16 E.

Emily Barnaby..... W. ½ of section 34..... 320

(Patent sent to Agent Vanderslice Feb. 16, 1861.)

No. 77. Township 2 N., Range 18 E.

Daniel Godfrey.	Lot No. 4 of section	32.....	9.80
	" No. 5 "	32.....	47.60
Patent delivered to	" No. 3 "	32.....	6.10
Hon. James Craig, De-	" " 2 "	32.....	61.70
cember 21, 1860.	" " 1 "	32.....	37.90
Present.	S. W. ¼ of N. E. ¼ "	32.....	40.
	N. W. ¼ of N. E. ¼ "	32.....	40.
	N. E. ¼ of N. E. ¼ "	32.....	40.
			283.10

* * * * * * *

38 No. 119. Township 3 N., Range 16 E.

Antoine Barada..... E. ½ of section 14..... 320

(Patent sent to Agent Vanderslice, Feb. 16, 1861.)

No. 120. Township 3 N., Range 16 E.

Euphazia Barada..... W. ½ of section 14..... 320

Patent sent to Agent Vanderslice, Feb. 16, 1861.

* * * * * * *

No. 123. Township 3 N., Range 16 E.

Mary Bono..... N. ½ of fr'l section 3..... 306.24

(Patent sent to Agent Vanderslice, Feb. 16, 1861.)

No. 128. Township 3 N., Range 16 E.

Margarette Sloan..... S. ½ of section 10 320

Same remark as above.

No. 129. Township 3 N., Range 16 E.

John Sloan..... N. ½ of section 10..... 320

Same remark as above.

No. 130. Township 3 N., Range 16 E.

Artemecia Sloan..... E. ½ of section 9..... 320

Patent sent to Agent Vanden-lice, Feb. 16, 1861.

* * * * * * *

No. 147. Township 3 N., Range 16 E.

Antoine Paul..... N. ½ of section 12..... 320

Same remark as above.

No. 148. Township 3 N., Range 16 E.

Elizabeth Paul..... S. ½ of section 12..... 320

Same remark as above.

* * * * * * *

No. 153. Township 3 N., Range 16 E.

Louisa Paul..... W. ½ of section 9..... 320

Same remark as above.

39 No. 154. Township 3 N., Range 16 E.

Madeline Paul..... N. ½ of section 16..... ... 320

Same remark as above.

No. 155. Township 3 N., Range 16 E.

Prisa Paul..... S. ½ of section 16..... 320

Patent sent to Agent Vanderslice Feb. 16, 1861.

No. 156. Township 3 N., Range 16 E.

Eliza Paul..... N. ½ of section 15..... 320

Same remark as above.

* * * * * * *

No. 174. Township 1 N., Range 17 E.

John Dupuis..... Lot No. 1 of section 36..... 31.20

Patent sent to Agent Vanderslice Feb. 16, 1861. " 2 36..... 57.60

" 3 36..... 64.

Township 1 S., R. 17 E.

Lot No. 1 of section 1..... ..... 2.10

Township 1 S., Range 18 E.

Lot No. 4 of section 6..... 27.40

" 3 6..... ... 26.10

" 2 6..... 21.10

Township 1 N., Range 18 E.

	Lot No. 6 of section 31	45.30
	" 2 " 31	44.80
		319.60

* * * * * * *

No. 199. Township 4 N., Range 15 E.

John Pilcher..... E. ½ of section 36..... 320

(Patent sent to Agent Vanderslice Feb. 16, 1861.)

* * * * * * *

No. 214. Township 3 N., Range 16 E.

William Barada..... W. ½ of section 23 320

(Patent sent to Agent Vanderslice Feb. 16, 1861)

No. 215. Township 3 N., Range 16 E.

Michael Barada..... E. ½ of section 23..... 320

(Patent sent to Agent Vanderslice, Feb. 16, 1861)

No. 216. Township 3 N., Range 16 E.

Celestine Barada..... E. ½ of section 22..... 320

Same remark as above.

No. 217. Township 3 N., Range 16 E.

Clara Barada..... W. ½ of section 22..... 320

Same remark as above.

No. 218. Township 3 N., Range 16 E.

Juliette Barada..... S. ½ of section 24..... 320

(Patent sent to Agent Vanderslice, Feb. 16, 1861.)

* * * * * * *

No. 239. Township 4 N., Range 16 E.

Henry Fontenelle.....	Lot No. 3 of section 23		47.80
	" 4 " 23		27.70
	" 5 " 23		22.70
	S. W. ¼ of S. W. ¼ of section 23		40.
	S. E. ¼ of S. W. ¼ " 23		40.
	S. E. ¼ of S. E. ¼ " 22		40.
	N. E. ¼ of N. E. ¼ " 27		40.
	S. E. ¼ of N. E. ¼ " 27		40.
			298.20

(Patent sent to Agent Vanderslice Feb. 16, 1861.)

41 No. 240. Township 4 N., Range 16 E.

Emily Fontenelle.....	N. W. ¼ of N. E. ¼ of section		27.....	40
	S. W. ¼ of N. E. ¼	"	27.....	40
	N. W. ¼	"	27.....	160
	N. E. ¼ of N. E. ¼	"	28.....	40
	S. E. ¼ of N. E. ¼	"	28.....	40
				320

Same remark as above.

No. 241. Township 4 N., Range 16 E.

L. Albert Fontenelle.... S. ½ of section 27..... 320

Same remark as above.

No. 242. Township 2 N., Range 17 E.

Mary Laflesh..... N. ½ of section 22..... 320

Same remark as above.

* * * * * * *

No. 245. Township 2 N., Range 17 E.

Lewis Saunsosee.....	S. E. ¼ of N. E. ¼ of section		21.....	40
	S. W. ¼	"	21.....	160
	N. W. ¼ of S. E. ¼	"	21.....	40
	N. E. ¼ of S. E. ¼	"	21.....	40
	N. W. ¼ of S. W. ¼	"	22.....	40
				320

Same remark as above.

* * * * * * *

No. 274. Township 4 N., Range 16 E.

William E. Sloan.....	Lot No. 1 of section		7.....	11.10
Patent delivered to	2	"	18.....	47.65
Hon. J. Craig, January	1	"	18.....	46.50
14, 1861.	4	"	18.....	39.20
	5	"	18.....	35.30
	S. W. ¼ of S. E. ¼ of section		18.....	40.
	S. E. ¼ of S. W. ¼	"	18.....	40.
	N. E. ¼ of S. W. ¼	"	18.....	40.
				299.75

* * * * * * *

42 DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *March 14th*, 1860.

The foregoing selections and allotments of land made in conformity with the provisions of the 10th article of the treaty of Prairie du Chien of July 15th, 1830, and of the 5th (4th) section of the act of Congress approved July 31st, 1854, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30th, 1855, and for other purposes," are respectfully laid before the Secretary of the Interior for his approval, with the exception of the following cases, viz: Mary Lyons, No. 15; Zela Kinsler, No. 36, Elizabeth Jones *alias* Elizabeth Lyons, No. 101, William Valondre, No. 127, Tansan Kensler, No. 136, Eustacia Kensler, No. 137, Levi Kensler, No. 138, Susan Leclare No. 141, Tersia Valondre, No. 165, Sophia Valondre No. 166, Julia Livermore, No. 265, Peter Livermore, No. 266, Henry Livermore, No. 267, Alexander Livermore, No. 268, Edwin Livermore, No. 269, Julia Livermore, No. 270, Peter La Clare, No. 271, Hennetta La Clare, No. 300, Wah-koo-tah, No. 349, Wa-me-doo-tah, No. 350, Chechee, No. 351, Mary Harvey, No. 381, William E. Sloan, No. 274, Pelagie Ritter, No. 389, as recommended in my letter of this date.

A. B. GREENWOOD,
Commissioner.

DEPARTMENT OF THE INTERIOR, *March 19th*, 1860.

The foregoing selections and allotments are approved, as recommended by the Commissioner of Indian Affairs.

J. THOMPSON, *Secretary.*

43 DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS, *August 14th*, 1860.

Satisfactory testimony having been presented to this office by late Special Commissioners Mott and Crawford, showing that the statements of the chiefs "Smutty Bear" and "The Man who was Struck by the Ree," which induced the suspension of 22 of the cases above specified, were incorrect, and being satisfied from the evidence in regard to the two remaining cases of William E. Sloan and the heirs of Pelagie Ritter, pertaining to a contest respecting a tract of land at the mouth of the Little Nemahaw river, that William E. Sloan is entitled to the land in controversy, I therefore respectfully recommend that the suspensions of the foregoing 24 cases, as particularly specified in the above certificate dated the 14th of March, 1860, may be withdrawn or set aside, and that the locations of land in these cases, reported by late Special Agent Starke may be approved with a view to the emanation of patents in favor of the respective parties.

A. B. GREENWOOD,
Commissioner.

DEPARTMENT OF THE INTERIOR, *August 17th*, 1860.

The foregoing suspensions as described in the certificate dated the 14th of March, 1860, are hereby withdrawn and set aside, and the locations to which they refer are approved as recommended by the Commissioner of Indian Affairs.

J. THOMPSON, *Secretary.*

44 Schedule showing the name, sex, age, and tribe of certain mixed blood Indians, to whom no lands have been allotted, and who are believed to be entitled under the 10th article of the treaty of Prairie du Chien, of July 15, 1830, to participate in the division of money arising from the sale of the tract of land excluded from the Nemahaw half-breed reserve by the McCoy survey of 1837–8.

* * * * * * *

Under the act entitled "An act making appropriations for the current and contingent expenses of the Indian Department. * * * &c., &c., approved March 3rd, 1863, (Stat. at Large, vol. 12, p. 792). the sum of $19621.27 was set apart to satisfy the claims of half breeds to proceeds of lands in the Nemaha reserve, under the provisions of the act approved Feb. 28, 1859 (Stat. at Large, vol. 11, p. 401).

It appears from an examination of the vouchers on file in the office of the 2nd auditor at this date, that Superintendent E. B. Taylor paid 72 persons as marked paid in *blue* ink in this book with date of payment	72	persons.
W. A. Burleigh	3	"
J. A. Burbank	11	"
Newton Edmunds	1	"
C. H. Norris	1	"
Total	88	

and the amount paid $17985.44, thus leaving a remainder of $1635.83.

It also appears that eight (8) persons have not been paid, which would require the remainder ($1635.83) for that purpose.

204.47 *

Amount remaining in the hands of E. B. Taylor not accounted for	$1022.69
Amount covered into the Treasury	613.14
	$1635.83

[* In pencil in copy.]

45 "Paid by Supt. Taylor letter Oct. 18, 1866," means that this office was advised under above date by said Taylor of said payment and enclosed vouchers. The requisition for funds drawn July 30, 1866.

* * * * * * *

No.	Name.	Sex.	Age.	Blood.	
1	James Andrews	Male	13 yrs	Yancton	Paid Nov. 12, 1863, by W. A. Burleigh.
2	Michelle Angie	Male	3 "	Santie	Paid Oct. 9, 1866, by Supt. Taylor, letter Oct. 18, 1866.
3	Benjamin Bovioux	Male	4 "	Yancton	Paid Oct. 9, 1866 by Supt. Taylor, letter Oct. 18, 1866.
4	Margarett Bolanger	Fem	33 "	"	" " " "
5	Generva Bolanger	"	13 "	"	Paid Jan'y 14, 1865, by Gov. Edmunds.
6	Rosalee Bolanger	"	9 "	"	Paid Oct. 9, 1866 by Supt. Taylor, letter Oct. 18, 1866.
7	Jacob Bolanger	Male	7 "	"	" Oct. 9, 1866 " "
8	Leonora Bolanger	Fem	2 "	"	" Oct. 9, 1866 " "
9	Madeline Benoist	"	7 "	"	" Oct. 9, 1866 " "
10	Joseph Benoist	Male	4	"	" Oct. 9, 1866 " "
11	Catharine Benoist	Fem	18 mo	"	" Oct. 9, 1866 " "
12	Harriet Castonia	"	12 yrs	"	" Oct. 9, 1866 " "
13	Joseph Clairmont	Male	2 "	"	" Oct. 9, 1866 " "
14	Mary Courtmarche	Fem		Iowa	
15	Louise Courtmarche	"		"	
16	James Claghorn	Male	9 mo	Omaha	Paid by E. B. Taylor, Oct. 31st, 1866.
95	Loiza Canigan or Carion		32 yrs	Otoe & Yancton Sioux.	Paid July 28, 1868, by J. A. Burbank.
17	Joseph Dorion	Male	14 to 16 yrs	Yancton	Paid Oct. 9, 1866, by Supt. Taylor, letter Oct. 18, 1866.
18	David Dorion	"	12 or 13 yrs	Yancton	" Oct. 9, 1866 " "
19	Louis Dorion	"	10 or 11 yrs	Yancton	" Oct. 9, 1866 " "
20	Isadore Dorion	Fem	7 or 8 yrs	Yancton	" Oct. 9, 1866 " "
21	Sophia Dorion	"	10 or 11 yrs	Yancton	" Oct. 9, 1866 " "
46					
22	John Dorion	Male	5 or 6 yrs	Yancton	" Oct. 9, 1866 " "
23	Julia Deluria, alias Manzawian Deluria.	Fem	18 yrs	Yancton	Paid Nov. 16, 1863 by W. A. Burleigh.
24	Sophia Deluria	"	14 "	"	" " " "
93	Julia Douville, or Due or Denelle.	"	38 "	Otoe and Yancton Sioux.	Paid July 28, 1863, by J. A. Burbank.
94	Elizabeth Douville or Due or Denelle.		16 "	" "	Paid Oct. 31, 1866, by E. B. Taylor.
96	Mary Didier or Digyer		26 "	" "	Paid July 28, 1863, by J. A. Burbank.
25	El-da-esth	Fem	10 "	Omaha	Paid Oct. 9, 1866, by Supt. Taylor—letter Oct. 18, 1866.
26	Henry Enon	Male	2 "	Yancton	" Oct. 9, 1866 " "
27	Logan Fawfau	"	16 "	Ottoe	
28	Mary Fontenelle	Fem	7 "	Omaha	Paid Nov. 7, 1866, by E. B. Taylor.
29	Susan Fontenelle	"	5 "	"	" " "
30	Tecumseh Fontenelle, (deceased).	Male	26 "	"	" " "
31	Josephine Fontenelle	Fem	8 "	"	" " "
32	Emily Fontenelle	"	13 "	"	Paid Oct. 15, 1866 by Supt. Taylor,—letter Oct. 18, 1866.
63	Lucy Fontenelle	"	3 "	"	Paid Nov. 7, 1866, " " Octo. 1, 1866.
34	Xavier Gallinaux	Male	11 "	Yancton	Paid Oct. 9, 1866, by Supt. Taylor—letter Oct. 18, 1866
35	Louis Gallinaux	"	9 "	"	" "
36	Carlos Gallinaux	"	6 "	"	" " " "
37	Celina Gallinaux	Fem	4 "	"	" " " "
38	Julia Gallinaux	"	4 mo	"	" " " "
39	Goes in the Water	"	5 yrs	Iowa	Paid Jan'y 3, 18 9, by C. H. Norris, 1st qr. 1869.
40	John Harvey	Male	13 "	Yancton	Paid Oct. 9, 1866, by Supt. Taylor—letter Oct. 18, 1866
41	Morgan Harvey	"	12 "	"	" " " "
42	Elizabeth Harvey	Fem	10 "	"	" " " "
43	Julia Harvey	Fem	8 yrs	Yancton	Paid Oct. 9, 1866, by Supt. Taylor—letter Oct. 18, 1866
44	Charles Henderson	Male	8 mo	Omaha	" " " "

No.	Name.	Sex.	Age.	Blood.	
45	Howarocha	Male	4 or 5 yrs.	Iowa	Paid Jan'y 4, 1864, by J. A. Burbank, to his father Louis Godfrey.
46	Baptise Jewette	"	6 yrs.	Yancton	Paid Oct. 9, 1866, by Supt. Taylor—letter Oct. 18, 1866
47	Rosalie Jewette	Fem	4 "	"	" " " "
48	Antoine Jewette	Male	2 "	"	" " " "
49	George Kirke	"	3 "	Santie	" " " "
50	Sophia Kirke	Fem	1 "	"	" " " "
51	Sophia Le Compt	"	7 "	Yancton	" " " "
52	John B. Labeau, Sr.	Male	40 "	Santie	" " " "
53	Joseph Labeau	"	35 "	"	Paid by — Taylor
54	John B. Labeau, Jr.	"	16 "	"	
55	Josephine Labeau	Fem	13 "	"	Paid Oct. 9, 1866, by Supt. Taylor—letter Oct. 18, 1866
56	Susan Laflesh	"	3 mo.	Ottoe	" " " "
57					
57	Margarette Lazie	Fem	20 yrs.	Ottoe	Paid Oct. 18, 1865, by J. A. Burbank.
58	William Ledeaux	Male	8 "	Omaha	Paid Oct. 31, 1866, by E. B. Taylor.
59	Mary McEldrey	Fem	5 "	Yancton	Paid Oct. 8, 1866, by Supt. Taylor—letter Oct. 18, 1866
60	Julia McEldrey	"	7 "	"	" " " "
61	Ellen McEldrey	"	3 "	"	" " " "
91	Ewen McKenzie	Male	36 "	Santie band of Sioux.	Paid March 10, 1865 by J. A. Burbank.
62	Na-ki-kin, alias Na-ki-grame.	Fem	7 "	Iowa	Paid Oct. 1, 1866, by Supt. Taylor—letter Oct. 18, 1866
63	Zoe Prue	"	6 "	Yancton	Paid Oct. 8, 1866 by Supt. Taylor—letter Oct. 18, 1866
64	Eliza Prue	"	4 "	"	" " " "
65	John Pecott	Male	1 yr.	"	
66	Paul Pacquette	"	6 "	"	Paid Oct. 18, 1866, by Supt. Taylor—letter Oct. 18, 1866
92	Louisa Picotte	Fem	22 "	Yancton Sioux	Paid Aug. 31, 1863, by J. A. Burbank.
67	Margarette Racine	"	17 "	Santie	Paid Oct. 9, 1866, by Supt. Taylor—letter Oct. 18, 1866
68	Joseph Racine	Male	10 "	"	" " " "
69	Pelagie Robedeaux	Fem	6 "	Ottoe	" " " "
70	Margarette Robedeaux	"	3 "	"	Paid Oct. 15, 1866, letter Oct. 18, 1866.
71	Antoine Roy	Male	11 "	Omaha	Paid Oct. 18, 1866, letter Oct. 18, 1866.
72	Catharine Roy	Fem	9 "	"	" " "
73	Palisie Roy	"	3 "	"	" " "
74	Louise Roy	"	13 "	"	" " "
75	Elizabeth Rogers, alias Pachalker.	"	40	"	Paid Sep. 11, 1863, by J. A. Burbank.
76	Mary Jane Rogers, alias Pachalker.	"	18 "	"	" " "
77	Elizabeth Rogers, Jr., alias Pachalker.	"	15 or 16 years.	"	Paid Nov. 7, 1866, by E. B. Taylor.
78	Geo. Washington Rogers, alias Pachalker.	Male	11 "	"	" " "
79	Francis Marion Rogers, alias Pachalker.	"	5 "	"	" " "
80	Antoine Sampea, Jr.	"	3 "	Yancton	Paid Oct. 9, 1866 by Supt. Taylor—letter Oct. 18, 1866
81	Antoine Sampea, Sr.	"	8 "	"	" " " "
82	Peter Sampea	"	4 "	"	" " " "
83	Catharine Simonds	Fem	6 mo.	"	Paid Nov. 16, 1863, by W. A. Burleigh.
84	Samuel Slager.	Male	3 "	"	Paid Oct. 9, 1866, by Supt. Taylor, letter Oct. 18, 1866
85	Henry St. Peter	"	5 "	"	" " "
86	Ellen St. Peter	Fem	4 yrs	Santie	Paid Oct. 9, 1866, by Supt. Taylor—letter Oct. 18, 1866
87	Rosalie Scoville	"	28 "	Ottoe	
88	Josephine St. Pierre	"	5 or 6 yrs	Yancton	Paid Jan'y 16, 1864, by J. A. Burbank.
89	Sarah Whitehouse	"	6 "	Iowa	Paid Oct. 1, 1866, by Supt. Taylor, letter Oct. 18, 1866.
90	Yellowhead	Male	4 "	Yancton	Paid Oct. 9, 1866. " "

48 Schedule of allotments (42 sheets) made to the members of the Omaha tribe of Indians, in the State of Nebraska, under the provisions of the act of Congress approved August 7, 1882 (Stat. 22, p. 341), by Special Agent A. C. Fletcher, office instructions dated April 21, 1883. Press Letter Book No. 111, p. 112.

No. of allotment 89, Indian name, Henry Fontenelle, English name Henry Fontenelle, male, aged 60, subdivision, lot 4 & S. W. ¼ S. E. ¼ sec. 26, lot 4. sec. 36, and lots 5 & 6, sec. 35, T. 24, R. 10, 186.26 acres.

No. of allotment 390, Indian name Therese Fuller, English name Therese Fuller, female, aged 43, subdivision N. W. ¼ sec. 14, T. 24, R. 8, 160 acres.

No. of allotment, 749, Indian name Mary Jane Paul, English name, Mary Jane Paul, female, aged 70; subdivision W. ½ S. E. ¼ sec. 8, and N. ½ N. E. ¼ sec. 17, T. 25, R. 8—160 acres.

No. of allotment, 559, Indian name Antoine Cabana, English name Antoine Cabana, male, aged 53, subdivision S. W. ¼ sec. 25, T. 24, R. 7, 160 acres.

No. of allotment, 684, Indian name, Louis Saunsoci, English name Louis Saunsoci, male, aged 60, subdivision N. E. ¼ sec. 25, T. 25, R. 9 160 acres.

No. of allotment, 743, Indian name Madeline Paul Scott, English name Madeline Paul Scott, female, aged 40, subdivision lots 1 & 2 & S. ½ N. E. fr'l ¼ sec. 2, T. 25 R. 8, 158.94 acres.

No. of allotment, 744, Indian name Elizabeth Paul Baylis, English name Elizabeth Paul Baylis, female, aged 38, subdivision lots 3 & 4, and S. ½ N. W. fr'l ¼ sec. 2, T. 25, R. 8, 158,92 acres.

49 No. of allotment, 746, Indian name Eliza Paul Wheeler, English name Eliza Paul Wheeler, female, aged 36, subdivision E. ½ & N. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼ sec. 2, T. 25, R. 8, 160 acres.

No. of allotment 747, Indian name Louise Paul Atkin, English name Louise Paul Atkin, female, aged 30, subdivision, E. ½ N. E. ¼ & N. E. ¼ S. E. ¼ sec. 3, T. 25, R. 8, and S. W. ¼ S. E. ¼ sec. 11, T. 25, R. 8, 159.38 acres.

No. of allotment, 781, Indian name John Pilcher, English name, John Pilcher, male, aged 50, subdivision S. E. ¼ sec. 16, T. 25, R. 8, 9, 160 acres.

No. of allotment, 809, Indian name Juliet Barnaby Provo, English name, Juliet Barnaby Provo, female, aged 40, subdivision W. ½ N. E. ¼ and S. E. ¼ N. W. ¼ & N. E. ¼ S. E. ¼, sec. 27, T. 25, R. 8, 160 acres.

No. of allotment, 890, Indian name Emily Campbell, English name Emily Campbell, female aged 42, subdivision E. ½ N. E. ¼ & N. E. ¼ S. E. ¼ and lot 9 sec. 22, T. 25, R. 6, 150.98 acres.

No. of allotment 891, Indian name Lucien Albert Fontenelle, English name Lucien Albert Fontenelle, male, aged 24, subdivision W. ½ N. E. ¼, sec. 22, T. 25, R. 6, 80 acres.

No. of allotment 941, Indian name Susan Josephine Neals, English name Susan Josephine Neals, female, aged 45, subdivision N. E. ¼ sec. 33, T. 26, R. 8, 160 acres.

* * * * * * *

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *July 9th*, 1884.

I respectfully recommend that the foregoing schedule of allotments made to the members of the Omaha tribe of Indians, in Nebraska, under the provisions of the act of Congress ap-
50 proved August 7, 1882 (Stat. 22 p. 341), be approved.

H. PRICE,
Commissioner.

DEPARTMENT OF THE INTERIOR, *July 11th*, 1884.

The foregoing schedule of allotments made to the members of the Omaha tribe of Indians, in Nebraska, under the provisions of the act of Congress approved August 7, 1882, is hereby approved.

H. M. TELLER, *Secretary.*
R. V. B.

Schedule of allotments of land in severalty made to Omaha Indians residing on the Omaha reservation, Nebraska, by Special Agent John K. Rankin, under the act of Congress approved August 7, 1882, as amended in Indian appropriation act approved March 3, 1893, in accordance with instructions from the Commissioner of Indian Affairs dated April 24, 1899.

* * * * * * *

No. of allotment 186, English name Louis Neals, male, aged 67, subdivision S. ½ of N. W. ¼, sec. 34, T. 26, R. 8 E., 80 acres, omitted at Fletcher allotment.

* * * * * * *

No. of allotment 229, English name Mary La Flesche, female, aged 60, subdivision S. E. ¼ of N. E. ¼, sec. 12, T. 25, R. 9, 40 acres, and N. W. ¼ of S. E. ¼, sec. 32, T. 25, R. 7, 40 acres, wife of Joseph La Flesche.

* * * * * * *

I hereby certify that the foregoing schedules of allotments (28 sheets) made by me to the Omaha Indians residing on the Omaha reservation is correct; that each of the persons therein named
51 is entitled to the lands allotted to them; and that the same were selected in accordance with the provisions of the act of

Congress approved August 7, 1882, as amended in the Indian appropriation act approved March 3rd, 1893 (see Annual Report for 1893 page 506) and the instructions of the Commissioner of Indian Affairs approved by the Secretary of the Interior.

JOHN K. RANKIN,
U. S. Special Allotting Agent.

Omaha & Winnebago agency.
Nebraska, January 30, 1900.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *February 14th*, 1900.

The within schedule (embracing 28 sheets) of allotments of lands in severalty made to Indians on the Omaha reservation in Nebraska by Special Allotting Agent John K. Rankin, under the act of Congress approved March 3, 1893 (27 Stats. 612) amendatory of the act of August 7, 1882 (22 Stats. 342) and in accordance with instructions from the office, approved by the department, is respectfully submitted to the Secretary of the Interior, with the recommendation that he approve the allotments thereon described, except Nos. 695, 697, 785, 787 and 788, and cause patents to issue therefor in the names of the allottees in form and of the legal effect prescribed by section six of said act of August 7, 1882.

W. A. JONES,
Commissioner.
A. C. T.

DEPARTMENT OF THE INTERIOR, *February* 16, 1900.

The allotments to Indians on the Omaha reservation in Nebraska, as described in the above recommendation of the Commis-
52 sioner of Indian Affairs, are hereby approved (except Nos. 695, 697, 785, 787 and 788 which are suspended), and the Commissioner of the General Land Office is directed to cause patents to issue therefor in the names of the allottees in form and of the legal effect prescribed by the sixth section of the act of August 7, 1882 (22 Stats. 342).

THOS. RYAN,
Acting Secretary.
J. T. B.

Schedule of allotments made to the Iowa Indians of Kansas and Nebraska by Joseph A. Scott, U. S. Indian agent, under the act of Congress approved March 3, 1885, as amended by the act of January 26, 1887 (24 Stats., 367).

No. of allotment, 18, English name Daniel Godfrey, male, aged 63, subdivision east 40 acres of lot 4 (see description No. 3, p. 8) and S. E. ¼ of N. W. ¼, sec. 10, T. 1 S. R. 18 E. 80 acres.

No. of allotment 82, English name John Dupins, male, aged 50, subdivision lot No. 3 (38.24 a.) & lot No. 4 (29.22 a.) sec. 6 T. 1 S., R. 18, 67.46 acres.

No. of allotment 83, English name Clara Dupins, female, aged 48, subdivision N. W. ¼ of S. E. ¼ and lot 2 (32.34 a.) sec. 6, T. 1 S., R. 18, 72.34 acres, and lot 2, sec. 27, T. 1 N. R. 18, 20.09 acres, wife of No. 82.

* * * * * * *

I hereby certify that the foregoing schedule of allotments (eleven sheets) made by me to the Indians residing on the Iowa res-
53 ervation in Kansas and Nebraska is correct; that each of the persons therein named is entitled to the land allotted to them; and that the same were selected in accordance with the act of Congress approved March 3 1885 (23 Stats. 352) as amended by the act approved January 26, 1887 (24 Stats. 367) and the instructions of the Commissioner of Indian Affairs, dated December 2, 1891, February 13, 1892, and March 16, 1892, the former having been approved by the department.

J. A. SCOTT,
U. S. Indian Agent.

Pottawatomi & Great Nemaha agency, August, 1893.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *August* 26, 1893.

The foregoing schedule embracing 11 sheets of allotments of land in severalty made to the Indians residing on the Iowa reservation in Kansas and Nebraska, by United States Indian Agent Joseph A. Scott, under the act of Congress approved March 3, 1885 (23 Stats. 352) as amended by the act approved January 26, 1887 (24 Stats. 367) and the instructions of the Commissioner of Indian Affairs dated December 2, 1891, February 13, 1892 and March 16, 1892, the former having been approved by the department is respectfully submitted to the Secretary of the Interior, with the recommendation that he approve the 143 allotments therein described, and cause patents to issue therefor, in the names of the allottees, as provided by section 3 of the said act of March 3, 1885 as amended by the act of January 26, 1887 aforesaid.

D. M. BROWNING,
Commissioner.

DEPARTMENT OF THE INTERIOR, *October* 2, 1893.

54 The allotments to the Indians of the Iowa reservation in Kansas and Nebraska, as described in the foregoing recommendation of the Commissioner of Indian Affairs, are hereby approved, and the Commissioner of the General Land Office is directed to cause patents to issue therefor, in the names of the allottees, in form and of the legal effect prescribed by the 3d section of the act

approved March 3, 1885, as amended by the act of January 26, 1887 (24 Stats. 367).

WM. H. SIMS,
Acting Secretary.

Schedule of allotments of land in severalty made to Indians on the Pawnee reservation, in Oklahoma, by U. S. Special Agent Helen P. Clarke and U. S. Indian Agent D. J. M. Wood, under act of Congress approved February 8, 1887, as amended by the act of February 28, 1891, in accordance with instructions from the acting Commissioner of Indian Affairs, March 17, 1891.

* * * * * * *

No. of allotment 164, English name Emily Fontenelle, female aged 59, subdivision N. ½ of S. W. ¼, sec. 2, T. 21, N. R. 4 E.; N. E. ¼ of S. E. ¼, sec. 3, T. 21, N. R. 4 E., N. W. ¼ of N. E. ¼, sec. 11, T. 21, N. R. 4 E. 160 acres.

* * * * * * *

We hereby certify that the foregoing allotments made by us on the Pawnee reservation Oklahoma Territory are correct and in accordance with the provisions of the act of Congress approved February 8, 1887, as amended by the act of February 28, 1891, and the instructions of the acting Commissioner of Indian Affairs, approved by the Secretary of the Interior.

U. S. SPECIAL AGENT HELEN P. CLARK.
U. S. INDIAN AGENT D. J. M. WOOD.

Ponca, etc., agency, O. T., May 8th, 1893.

55

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *July* 8, 1893.

The foregoing schedule (embracing 12 sheets) of allotments of lands in severalty (numbered from 1 to 365) made to Indians on the Pawnee reservation, in Oklahoma, under the act of Congress, approved February 8, 1887 (24 Stats. 388) as amended by the act of February 28, 1891 (26 Stats. 794) by Special Agent Helen P. Clarke and U. S. Indian Agent D. J. M. Wood, under authority of the President, dated September 6, 1890, and instructions from this office approved by the department, and also in accordance with the provisions of an agreement with said Indians, ratified by the act of Congress, approved March 3, 1893, (27 Stats. 644) is respectfully submitted to the Secretary of the Interior, with the recommendation that he approve the allotments therein described and cause patents to issue therefor in the names of the allottees, as provided in the 5th section of said act of February 8, 1887.

D. M. BROWNING,
Commissioner.

DEPARTMENT OF THE INTERIOR, *July 10th*, 1893.

The allotments to Pawnee Indians in Oklahoma, as described in the above recommendation of the Commissioner of Indian Affairs, are hereby approved, and the Commissioner of the General Land Office is directed to cause patents to issue therefor, in the names of the allottees, in form and of the legal effect prescribed by the 5th section of the act of February 8, 1887.

WM. H. SIMS,
Acting Secretary.

56 OMAHA AGENCY, NEB., *7th Mo.*, *18th*, 1871.

RESPECTED FRIEND: Herewith I send receipts of the Omaha Indians for the delivery of certificates of title for their several allotments of land on the Omaha Indian reservation.

The chiefs in council have acknowledged the right of certain individuals belonging to the tribe, who are not living on their reservation, to receive their respective allotments of land in severalty, provided they will remove to the reservation and reside permanently amongst them; but object to the delivery of the title papers to such parties until their removal as aforesaid. This may account for the non-delivery to the respective allottees, of a number of the certificates forwarded for distribution by the Commissioner of Indian Affairs under date Mar. 17th, 1871.

Very respectfully,

E. PAINTER,
U. S. Ind. Ag't.

Sam'l M. Janney, supt. Ind. aff'rs.

Endorsed: Filed Feb. 12, 1902. Geo. H. Thummel, clerk.

57 Thereupon afterwards, to-wit: on the 14th day of February 1902, certified copies of annuity rolls were filed in said case, which said copies of annuity rolls are in words and figures following, to-wit:

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *October* 4, 1901.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed extract copies of papers are true and correct extracts made from the original vouchers on file in the Indian files of the office of the auditor for the Interior Department, in this department.

[SEAL.] In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed on the day and year first above written.

O. L. SPALDING,
Acting Secretary of the Treasury.

L. J. A.
S. M. G.

58 We, the chiefs, warriors, heads of families and individuals without families of the Omaha tribe of Indians, within the Council Bluffs agency, acknowledge the receipt of twenty thousand four hundred and seventy-five dollars of George Hepner, Indian agent, in the sums appended to our names, being our proportion of the aforesaid sum.

Names.	Marks.	Families.				Distributive share.		Amount paid.
		Men.	Women.	Children.	Total.			
						Dollars.	*Cents.*	*Dollars.*
* * *	*	*	*	*	*	*	*	*
Margaret Sloan } Not paid	*	0	1	6	7	.....	.....	175
Mrs. Neal }	*	0	1	4	5	.....	.....	125
* * *	*	*	*	*	*	*	*	*
* * *	*	*	*	*	*	.....	*	*

We certify that we were present at the payment of the above mentioned amounts, and saw the amount paid to the several Indians at Black Bird hills, and that their signatures or marks were affixed in our presence, this 31 day of May, 1855,

LEWIS SAUNSOSEE.
WASHINGTON HEPNER.
EDMUND BEDELL.
HENRY FONTENELLE,
U. S. Interpreter.

We the undersigned chiefs of the Omaha tribe of Indians within the Council Bluffs agency acknowledge the correctness of the foregoing receipts.

LOGAN FONTENELLE.
JOSEPH LAFLECHE, (his x mark.)
GRA-DAH-NAH-SHI, his x mark.
GA-HI-GA-SHNIGAH, his x mark.
FAH-WAH-GAH-HA, his x mark.
SHU-DA-NAH-ZI, his x mark.
WAH-NU-KI-GA, his x mark.
TA-SAH, his x mark.
WAH-NI-TAH-WAH-HA, his x mark.

59 Endorsed on back: Voucher No. 14, from Omaha tribe of Indians for payment made at B. B. hills, May 31, 1855, 2 qr. of 20,250.

The undersigned half breeds of the Omaha tribe of Indians Margarett Sloan and Mary Neel acknowledge to have received of George Hepner, Indian agent three hundred and fifty dollars our part of a payment made the Omaha tribe of Indians at B. B. hills, May 31, 1855, not having been present at said payment, for which we have this 30th day of August, 1855, signed our marks in duplicate.

MARGETTE SLOAN, her x mark.
Received..... $175.00

her
MARY x NEILS,
mark.
Rec..... 175.00

$350.00

We certify that we were present at the payment of the above mentioned sum, and saw the amount paid to said half breeds, that their signatures were affixed in our presence, this 30th day of August, 1855.

J. B. ROBERTSON.
HENRY FONTENELLE,
U. S. Interpreter.

We, the undersigned chiefs of the Omaha tribe of Indians, acknowledge the correctness of the above receipts, and also acknowledge it was our request that said payment be made.

JOSEPH LAFLECHE, his x mark.
GRA-DAH-NAH-THI, his x mark.
GA-HI-GA-SHINGAH, his x mark.
YAH-WAH-GAH-HA, his x mark.
SHU-DA-NAH-ZI, his x mark.
WAH-NU-KI-GA, his x mark.
TA-SAH, his x mark.

Endorsed on back: Voucher No. 2, August 30th, 3 qr. 1855, Margaret Sloan & Mary Neil, with Omaha chiefs. $350.00.

60 We, the chiefs, warriors, heads of families, and individuals without families, of the Omaha tribe of Indians, within the Council Bluffs agency, acknowledge the receipt of nineteen thousand four hundred and forty dollars, of George Hepner, Ind. agent, in the sums appended to our names, being a part of our proportion of the annuity due said tribe for the year 1855.

	Marks.	No. male.	No. females.	Total.	Dollars.	Cents.
* * *	*	*	*	*	*	*
Margaret Sloan...	*	2	5	7	157	50
Mary Paul.....	*	0	6	6	135	
Antone Baradoe..	*	3	1	4	90	
* * *	*	*	*	*	*	*

We certify that we were present at the payment of the above mentioned amounts and saw the amount paid to the several Indians in Bellevue, and that their signatures or marks were affixed in our presence, this 17th day of October, 1855.

HENRY FONTENELLE,
U. S. Interpreter.
JONAS MITSHELL.

We the undersigned chiefs of the Omaha tribe of Indians, within the Council Bluffs agency, acknowledge the correctness of the foregoing receipts.

JOSEPH LAFLESH, his x mark.
GRA-DAH-NAH-SHI, his x mark.
ISH-KAH-DAH-HU, his x mark.
TAH-WAH-GAH-HA, his x mark.
WAH-NO-KI-GA, his x mark.
SHU-DA-NAH-ZI, his x mark.

HENRY FONTENELLE,
U. S. Interpreter.

I certify on honor that I have this 17th day of Oct. 1855, paid the Omaha tribe of Indians nineteen thousand four hundred &
61 forty dollars, as the within receipts indicate.

GEORGE HEPNER,
Indian Agent.

Endorsed on back: Voucher No. 7, Oct. 17, 4 qr., 1855. Omaha chiefs. Part of annuity, payment $19440.

OMAHA AGENCY, BLACK BIRD, *September*, 1856.

We, the chiefs, warriors, heads of families, and individuals without families, of the Omaha tribe of Indians, within the Omaha agency acknowledge the receipts of fourteen thousand dollars, less ninety-six 50-100 dollars, of John B. Robertson, Indian agent, in the sums appended to our names, being our proportion of the annuity due said tribe for the last half of the year 1855.

Names of chiefs, heads of families.	Marks.	Families.			Distributive shares.		Amount paid.	
		Males.	Females.	Total.	Dollars.	Cents.	Dollars.	Cents.
* * * *	*	*	*	*	*	*	*	*
Mary *Baul*.....	*	1	7	8	15	50	124	00
Bardan.....	*	3	6	9	15	50	139	50
Margaret Sloan..	*	2	3	5	15	50	77	50
Mary Bono	*	0	1	1	15	50	15	50
* * * *	*	*	*	*	*	*	*	*

We certify that we were present at the payment of the above mentioned amounts, and saw the amount paid to the several Indians in coin of the United States; and that their signatures or marks were affixed in our presence this 22d day of September. 1856.

HENRY FONTENELLE, *U. S. Int'r.*
CHAS. B. SMITH.
T. H. ROBERTSON.

We the undersigned chiefs of the Omaha tribe of Indians within the Omaha agency, acknowledge the correctness of the foregoing receipts.

62

GTHA-DAH-NASHI.
TA-SAH.
WAH-HAH-GAH.
WAH-NU-KI-GA.
TAH-WAH-GAH-HA.
PA-DA-GAH-HI.
SHU-DA-NAH-ZI.
WAH-SHKAH-MUNI.

I certify on honor that the above receipt roll is correct and just and that I have actually, this 22 day of Sept. 1856, paid the amount thereof.

J. B. ROBERTSON, *Ind. Ag't.*

Endorsed on back: Voucher No. 3. Annuity paid to Omaha Indians for the last half of the year 1855, $13903.50.

OMAHA AGENCY,
BLACK BIRD, N. T., *November* 17, 1856.

We, the chiefs, warriors, heads of families and individuals without family, of the Omaha tribe of Indians, within the Omaha agency, acknowledge the receipt of nineteen thousand, seven hundred & fifty-six dollars of John B. Robertson, Indian agent, in the sums appended to our names, being our proportion of the annuity due said tribe, from the Government of the United States, for the year one thousand, eight hundred and fifty-six.

Names of heads of families.	Marks.	Families.			Dis. shares.		Am't paid.	
		Male.	Female.	Total.				
* * *		*	*	*	*Dollars.* *	*Cents.* *	*Dollars.* *	*Cents.* *
Mary Paul.....	*	1	4	5	22	00	110	00
Margaret Sloan.	*	1	2	3	22	00	66	00
Antoine Bardau	*	2	4	4	22	00	88	00
* * *		*	*	*	*	*	*	*

63 We certify that we were present at the payment of the above mentioned amounts, and saw the amount paid to the several Indian- in gold and silver coin of the United States, and that their signatures or marks were affixed in our presence, this 17th day of November, 1856.

HENRY FONTENELLE,
U. S. Interpreter.
JAMES G. WHITAKER.
T. H. ROBERTSON.

I certify on honor, that the above receipt roll is correct and true, and that I have actually paid the amounts specified this 17th day of November, 1856.

J. B. ROBERTSON,
Indian Agent.

We, the undersigned chiefs of the Omaha tribe of Indians, within the Omaha agency, acknowledge the correctness of the foregoing receipts.

GTHA DAH NAH NUSHI, his x mark.
WAH HAH GAH, his x mark.
TAH WAH GAH HA, his x mark.
WAH NU KI GA, his x mark.
PA DA GAH HI, his x mark.
WASH KAH NUMI, his x mark.
TA SAH, his x mark.

We, the undersigned chiefs of the Omaha tribe of Indians, within the Omaha agency, acknowledge the receipt of three hundred and forty & 50-100 dollars of John B. Robertson, agent, it being the surplus of the annuity due said tribe, after paying the distributive shares to the heads of families—for the last half of the year 1855 and the year 1856.

GRA-DAH-NAH-NUSHI, his x mark.
WAH-HAH-GAH, his x mark.
TAH-WAH-GAH-HA, his x mark.
WAH-NU-KI-GA, his x mark.

We certify that we were present at the payment of the above mentioned amount to the chiefs of the Omaha tribe of Indians, and saw the amount paid in coin of the United States.

64 HENRY FONTENELLE,
U. S. Interpreter.
JAMES G. WHITAKER.
T. H. ROBERTSON.

I certify that the above receipt of the chiefs of the Omaha Indians is correct, and that I have actually paid the amount specified therein.

J. B. ROBERTSON, *Ind. Agt.*

Endorsed on back: Voucher No. 1, annuity paid to Omaha Indians for the year 1856. $20096 50–100.

Receipt Roll of the Omaha Indians.

We, the chiefs, warriors and heads of families and individuals without families, of the Omaha tribe of Indians acknowledge the receipt of the sum appended to our names, being our proportion of the semi-annual annuity due said tribe for the year 1858.

Names.	Marks.	Families.			Distr'b. shares.	Amount.
		Male.	Females.	Total.		
* * *	*	*	*	*	*	*
Marti Shon.....	*	1	5	6	11.69	70.14
Nushu-num-pa-shi.....	*	2	4	6	† "	70.14
Esha-tha-ye.....	*	1	0	1	"	11.69
M. Sloan.....	*	3	2	5	"	58.45
* * *	*	*	*	*	*	*

† [In pencil:] Antoine Barada.

I certify that I was present at the payment of the above mentioned amounts, and saw the amount paid to the several Indians and that their marks were affixed in my presence this the 29th day of December, 1858.

I. SHAW GREGORY

65 We, the chiefs of the Omaha nation acknowledge that the payment of the above sums was made in our presence and that the amounts and marks are correct.

JOSEPH LAFLESH x.
GREADA x NONZE.
ESH KA x DABE.
YA WA x GA HA.
WA NO x KE GA.
PA DA x GA HE.
WASH x SHA MONY.
WHITE x COW.
YELLOW x SMOKE.

Signed in presence of
I. SHAW GREGORY.

I do hereby certify that I read the above certificate to the chiefs whose names are appended and that they acknowledged it to be correct.

LEWIS SAUNSOSEE, *Interpreter.*

I certify upon honor that the above is true and correct and that the amount specified was actually paid by me.

WM. F. WILSON,
U. S. Ind. Agt.

Endorsed on back: Receipt roll of the Omaha Indians 4 qr. 1858. No. 20.

The United States Dr. to Thomas Sloan.

1858.
Sept. 30th. For services as engineer for the Omaha Indians from July 1st to Sept. 30th, 1858..... $300.00

Received from Wm. F. Wilson U. S. Indian agent the sum of three hundred dollars in full of the above account.

THOMAS SLOAN.

I certify upon honor that the above account is correct and just, and that I have actually this 31st day of December 1858 paid the amount thereof.

WM. F. WILSON,
U. S. Ind. Agent.

Endorsed on back: Voucher No. 14. Abstract B. 4th qr. 1858.

66 The United States Dr. to Thomas Sloan.

1858.
Dec. 31st. For services as engineer for the Omaha Indians from Oct. 1st, to Dec. 31st, 1858..... .. 300.00

Received from Wm. F. Wilson, U. S. Indian agent the sum of three hundred dollars in full of the above account.

THOMAS SLOAN.

I certify upon honor that the above account is correct and just and that I have actually this 31st day of December 1858 paid the amount thereof.

WM. F. WILSON,
U. S. Ind. Agent.

Endorsed on back: Voucher No. 15, abstract B. 4th qr. 1858.

Receipt Roll of the Omaha Indians.

We, the chiefs, warriors, heads of families and individuals without families, of the Omaha tribe of Indians, acknowledge the receipt of the sums appended to our names, being our proportion of the semi-annual annuity due said tribe for the year 1859.

Names.	Mark.	Families.				Dis. share.	Amount.	Full Amount.
		Men.	Women.	Children.	Total.			
* * *	*	*	*	*	*	*	*	*
Mr. Sloan..	*	3	2	.....	5	11.95	5	59.77
* * *	*	*	*	*	*	*	*	*
Mu-shu-numpa-shi	*	4	2	.....	6	11.95	5	71.73
* * *	*	*	*	*	*	*	*	*

67 We certify that we were present at the payment of the above amounts and saw the amount paid to the several Indians in cash and that their signatures or marks were affixed in our presence this 31st of May, 1859.

FRANK WELCH.
GEO. W. DOANE.
P. A. SARPY.
T. H. HINSMAN.

We, the undersigned chiefs of the Omaha tribe of Indians within the Omaha agency acknowledge the correctness of the foregoing receipts.

	Marks.
JOSEPH LAFLESH,	x
WA-TAH-MAH-GI,	x
GAH-HEH-GA-GIN-GAH,	x
TAH-WAH-GAH-HA,	x
WAH-NO-KE-GA,	x
SO-DO-NAH-ZE,	x
PA-DA-GAH-HI,	x
TA-LA,	x

Endorsed on back: No. 39, receipt roll. Omaha Indians.

SAINT JOSEPH, *August 16th*, 1860.

SIR: I herewith have the honor to transmit explanations to exceptions in the 4th fractional quarter 1859, 30th Nov. 1859.

* * * * * * *

Abstract "B," Voucher No. 21.

I herewith enclose voucher.

BLACK BIRD FAM., *Dec'r 31st*, 1858.

Received of Wm. F. Wilson, U. S. Indian agent one thousand four hundred and twenty nine dollars and nine cents, a balance remaining from the semi-annual payment of the annuity, which by direction of the chiefs is to be disbursed by me to the individuals of the tribe.

HENRY FONTENELLE.

68 Signed in presence of

	his mark.
JOSEPH FLECHE,	x
ISH-KA-DA-BI,	x
GRA-DA-NUSHI,	x

I certify that I was present and saw the money paid to Henry Fontenelle on Dec'r 31st, 1858.

I. SHAW GREGORY,
U. S. Ind. Agt.

St. Joseph, Aug. 15th, 1860.

Endorsed on back: Henry Fontenelle, receipt for balance of annuity paid by consent to him for Omaha Indians.

The United States to Thomas Sloan, Dr.

1858, June 11.	To services from date to July 1, 1858, as engineer in Omaha mill—20 days at rate of $100 per month.....	$66.60
1859, Jan. 1.	To services from date to Jan. 8, 1859, as engineer in Omaha mill—8 days, at rate of $100 per month.....	26.64
		$93.24
	Cr.	
	By am't of lumber sold by Mrs. Sloan at mill.	38.00
	Bal.....	$55.24

Received at Omaha agency Aug. 21, 1860 of Geo. B. Graff, U. S. Indian agent fifty-five and 24–100 dollars in full of the above account.

$55.24 THOMAS SLOAN. (x)

69 I certify on honor that the above account is correct and just and that I have actually this 21 day of Aug. 1860 paid the amount thereof.

GEO. B. GRAFF,
U. S. Ind. Agt.

Endorsed on back: Omaha agency. Tho. Sloan, Aug. 21, voucher No. 3 abstract A. 3 qr. 1860. Services as engineer, pd. by order of letter June 8, 1860.

OMAHA INDIAN AGENCY, *Oct.* 25, 1860.

We, the chiefs, warriors heads of families, and individuals without families, of the Omaha tribe of Indians, within the Omaha agency, acknowledge the receipt from George B. Graff, Omaha agent of the sums appended to our names, being a portion of the annuity due said tribe for the year 1860.

Names.	Marks.	Families.			Distributive share.		Amount paid.	
		Males.	Females.	Total.				
							Dolls.	*Cts.*
* * *	*	*	*	*	*	*	*	*
Antoine Barada.....	*	3	4	7	20	00	140	00
Margarett Sloan.....	*	2	2	4	"		80	00
* * *	*	*	*	*	*	*	*	*

We certify that we were present at the payment of the above mentioned amounts, and saw the amount paid to the several Indians in coin, and that their signatures or marks were affixed in our presence this 25 Oct. 1860.

J. B. PATRICK.
R. T. BEALL.
HENRY FONTENELLE,
U. S. Interpreter.

70 We the undersigned, chiefs of the Omaha tribe of Indians within the Omaha agency acknowledge the correctness of the foregoing rec eipts:

JOSEPH LA FLESHE, x
WA-HA-GA, x
GRA-DA-NA-JI, x
WA-NON-KI-GA, x
TA-WA-GA-HA, x
SHON-DA-NA-ZI, x
PA-DA-GA-HI, x
WA-SKA-MONI, x
TA-SAH, x

Endorsed on back: Omaha Indian agency. Geo. B. Graff, agent. Voucher No. 1. Abstract A. 4″ qr. 1860. Pay roll of annuity. 25 Oct. 1860.

We, the chiefs, warriors, heads of families and individuals without families of the Omaha tribe of Indians within the Omaha ageny acknowledge the receipt from Geo. B. Graff, Omaha agent, of the sums appended to our names, being the residue of the annuity of the said tribe for the year 1860.

Names.	Marks.	Families.			Distributive shares.		Am't paid.	
		Males.	Females.	Total.				
							Dolls.	*Cts.*
* * *	*	*	*	*	*	*	*	
M. Barrida	*	1	1	2	1	50	3	00
* * *	*	*	*	*	*	*	*	

We certify that we were present at the payment of the above mentioned amounts and saw the amount paid to the several
71 Indians in coin, and that their signatures or marks were affixed in our presence this 27 day — June 1861.

HENRY FONTENELLE,
U. S. Interpreter.
W. C. M. BEATH.
J. B. STUTSMAN.

We, the undersigned chiefs of the Omaha tribe of Indians, within the Omaha agency, acknowledge the correctness of the foregoing receipts.

	Marks.
JOSEPH LA FLESCHE.	x
TA-WA-GA.	x
GRA-DA-NA-JI.	x
WA-NO-KE-JA.	x
TA-WA-GA-HI.	x
SHA-DA-NO-JI.	x
PA-DA-GA-HI.	x
WA-SKO-MONI.	x
TA-SAH.	x
—— ——.	x

Attest:
J. B. STUTSMAN.
WM. F. LOCKWOOD.

Endorsed on back: Omaha Indian agency. Abstract A. Voucher No. 1. 2nd qr. 1861.

The United States to Michael Barrida, Dr.

1861.
June 24. To 16 days' labor on farm at Omaha Indian agency.. 16.00

Received at Omaha agency, 24 June, 1861, of George B. Graff, U. S. Indian agent, sixteen dollars, in full of the above account.

his
$16. MICHAEL x BARRIDA.
mark.

Attest: M. C. WILBUR.

I certify on honor, that the above account is correct and just, and that I have actually, this 24 day of June, 1861, paid the amount thereof.

GEO. B. GRAFF,
U. S. Ind. Ag't.

Endorsed on back: Omaha Indian agency. $16. Voucher No. 14, abstract A. 2d qr. 1861.

72 We, the chiefs, warriors, heads of families and individuals without families of the Omaha tribe of Indians within the Omaha agency, acknowledge the receipt of eighteen hundred & ninety six dollars of O. H. Irish, U. S. Indian agent in the sums appended to our names, being our proportion of the annuity due said tribe for the year 1861.

Names.	Marks.	Families.			Distributive share.		Doll's.	Cts.
		Males.	Females.	Total.				
* * *	*	*	*	*	*	*	*	*
Mitchell Burada	*	1	2	3	2	00	6	00
Antoine Barada	*	2	4	6	2	00	12	00
	*	*	*	*	*	*	*	*

We certify that we were present at the payment of the above mentioned amounts, and saw the amount paid to the several Indians in coin, and that their signatures or marks were affixed in our presence this thirtieth day of June, 1862.

ALEX. McCREADY.
R. G. FANCHILL.
CHAS. F. PORTER.
HENRY FONTENELLE.

We, the undersigned chiefs of the Omaha tribe of Indians within the Omaha agency, acknowledge the correctness of the fore-
73 going receipts.

ESTA MAH ZA (Joseph Laflesche). His mark.
GRA TAMAH JE (Standing Hawk). do.
GA HE GAH GIN GAH (Little Chief). do.
TAH WAH GAH HA (Village Maker). do.
WAH NO KE GA (Noise). do.
SO DA WAH ZE (Yellow Smoke). do.
PA DA GA HI (Fire Chief). do.
TA SAH (White Cow). do.
WASH KA MONI (Hard Walker). do.

Attest: HENRY FONTENELLE.

I certify on honor, that the foregoing account is just & correct, that the above amounts were paid to the several Indians therein named, on the 30th day of June 1862.

O. H. IRISH,
U. S. Ind. Ag't.

Endorsed: Voucher No. 1, abstract A. Qr. ending 30th June 1861.

We, the chiefs, warriors, heads of families and individuals without families of the Omaha tribe of Indians within the Omaha agency, acknowledge the receipt of twenty-one thousand, four hundred & seventy-eight 50-100 dollars of O. H. Irish, U. S. Ind. ag't, in the sum appended to our names being our proportion of the annuity due said tribe for the fiscal year 1863.

Names.	Marks.	Families.			Distributive share.		Amount paid.	
		Males.	Females.	Total.				
					Doll's	*Cts.*	*Doll's.*	*Cts.*
* * *	*	*	*	*	*	*	*	*
Mary Paul	*	0	5	5	21	50	107	50
Antoine Barady	*	3	2	5	21	50	107	50
Margaret Sloan	*	2	2	4	21	50	86	00
Michael Barady	*	1	2	3	21	50	64	50
* * *	*	*	*	*	*	*	*	*

74 We certify that we were present at the payment of the above mentioned amounts and saw the amount paid to the several Indians in coin and Treasury notes, and that their signatures or marks were affixed in our presence the 2nd day of December, 1862.

ALEX'R McCREADY.
JOHN S. RAMSEY, Sr.

We the undersigned chiefs of the Omaha tribe of Indians within the Omaha agency, acknowledge the correctness of the foregoing receipts.

ESTA MA ZA (Joseph La Fleshe). x his mark.
GRA TA MA JE (Standing Hawk) x "
GA HI GA SHIN GA (Little Chief). x "
TA WA GA HI (Village Maker). x "
WA NON KE GA (Noise). x "
SO DA NA ZE (Yellow Smoke). x "
PA DA GA HI (Fire Chief). x "
TA SAH (White Cow). x "
WASH KA MO NI (Hard Walker). x "

Attest: HENRY FONTENELLE.

I certify on honor that the foregoing account is just and correct, that the above amounts were paid to the several Indians therein named on the 2nd day of December, 1862.

O. H. IRISH,
U. S. Ind. Ag't.

Endorsed: Voucher No. 1 abstract A. Qr. ending 31" Dec. '62.

We, the chiefs, warriors, heads of families and individuals without families of the Omaha tribe of Indians within the Omaha agency, acknowledge the receipt of twenty thousand dollars of Robert W. Furnas, United States Indian agent in the sums appended to our names being a proportion of the annuity due said tribe for the fiscal year ending June 30th, 1865.

75 Names.	Marks.	Families.			Dist. share.		Total amount.	
		Males.	Females.	Total.	Dollars.	Cents.	Dollars.	Cents.
* * *	*	*	*	*	*	*	.....	*
Mary Paul.....	*	0 *	5 *	5 *	20 *	00 *	100 *	00
Michael Barady..	*	1 *	0 *	1 *	20 *	00 *	20 *	00 *
* * *	.....							

We certify that we were present at the payment of the above mentioned amounts and saw the amounts paid to the several Indians in Treasury notes, and that their signatures or marks were affixed in our presence the ninth day of January A. D. 1865.

JOHN H. MANN,
F. W. SNOW,
ROBERT TEARE,
Witnesses.

We, the undersigned chiefs of the Omaha tribe of Indians within the Omaha agency acknowledge the correctness of the foregoing receipts.

ESTA MA ZA (JOSEPH LAFLESH.	x	his mark.
GRA DA NA ZHI, STANDING HAWK.	x	his mark.
GA HE GA ZHIN GA, LITTLE CHIEF.	x	his mark.
TA WA GA HA, VILLAGE MAKER.	x	" "
WA NIN KE GA, NOISE.	x	" "
FRA DA NA ZHI, YELLOW SMOKE.	x	" "
PA DA GA HI, FIRE CHIEF.	x	" "
TA SON, WHITE COW.	x	" "
WASH KA MO NI, HARD WALKER.	x	" "
MA HA NIN GA, NO KNIFE.	x	" "

I hereby certify on honor that I have this day paid the within amount as herein specified.

R. W. FURNAS,
U. S. Ind. Agent.

Omaha Indian agency, January 9th, 1865.

76 Endorsed: Voucher No. 10, abstract A. Annuity pay roll Omaha Indians for fiscal year ending June 30, 1865.

We, the chiefs, braves, & heads of families and individuals without families of the Omaha tribe of Indians, acknowledge the receipt from Samuel M. Janney supt. of Indian affairs of fourteen thousand five hundred & five dollars in the sums affixed to our names respectively being our proportion of the cash portion of our annuity for the year one thousand eight hundred & sixty nine.

Names.	Marks.	Families.				Dollars & cents.	Amount paid.
		Men.	Women.	Children.	Total.	Dist. shares.	
* * *	*	*	*	*	*	*	*
Barrady, Sophia†	*	*	1	3	4	14	56
* * *	*	*	*	*	*	*	*

[† In pencil:] Wife Michael Barada.

We, Dr. Edward Painter, U. S. Ind. agent, and Louis Saun soci U. S. interpreter, do hereby certify that we were present at the payment above mentioned and made, and saw the same paid by Samuel M. Janney, supt. Ind. affairs to the said Indians in the sums set opposite their names respectively and saw said Indians affix their signatures or mark- to the foregoing receipt in our presence this 18th day of 9th mo. A. D. 1869.

Attest:

E. PAINTER,
U. S. Ind. Agent.
LOUIS SAUN SOCI,
U. S. Interpreter.

* * * * * * *

We, Dr. Edward Painter, U. S. Ind. agent and Louis Saun soci, U. S. interpreter do hereby certify that we were present at the payment above mentioned and made & saw the same paid
77 by Samuel M. Janney, supt. Ind. affairs, to the said Indians in the sums set opposite their names respectively & saw said

Indians affix their signatures or marks as chiefs to the foregoing receipt in our presence this 18th day of 9th mo. A. D. 1869.

E. O. PAINTER,
U. S. Ind. Ag't.
LOUIS SAUN SOCI,
U. S. Ind. Ag't.

Attest: ELIZA F. JANNEY.

Endorsed: Voucher No. 10. Abstract D. 3 qr. of 1867.

3d Qr., 1875.

We, the chiefs, braves, heads of families and individuals without families, of the Omaha tribe of Indians, acknowledge the receipt of ninety-eight hundred and thirteen 50-100 dollars of Barclay White, supt. Ind. aff., in the sums affixed to our names, being our proportion of the annuity of said tribe of Indians for the year one thousand eight hundred and seventy-five.

Names.	Marks.	Families.				Distributive share.		Amount paid.	
		Men.	Women.	Children.	Total.			*Dollars.*	*Cents.*
* * *	*	*	*	*	*	*	*	*	*
Wheeler, Eliza	*	...	1	3	4	9	50	38	
Paul, Louisa	*	....	1	....	1	.....	.....	9	50
Frost, Artemesia	*	....	1	1	2	.....	.....	19	
	*	*	*	*	*	*	*	*	*

We, T. T. Gillingham, U. S. Indian agent, and Louis Saunsoci, interpreter, do hereby certify that we were present at the payment above mentioned, and made, and saw the same paid by Barclay White, superintendent of Indian affairs, in the sums set opposite their names respect*fully*, and saw said Indians affix their
78 signatures or marks to the foregoing receipts in our presence this the fifteenth day of ninth month in the year of our Lord one thousand eight hundred and seventy-five and that all able bodied male Indians between the ages of eighteen and forty-five years, to whom said annuity was paid have performed service upon the reservation for the benefit of themselves or of the tribe at the

rate of one dollar per day to an amount equal in value to the annuity paid them.

T. T. GILLINGHAM,
U. S. Indian Agent.
LOUIS SAUNSOCI, x his mark.
Interpreter.

Witness:

D. S. WHITE, JR.

We, the undersigned citizens of Nebraska, hereby certify that we were present and saw the annuities above mentioned paid to the Omaha Indians by Barclay White, superintendent of Indian affairs, this 15th day of ninth month in the year of our Lord one thousand eight hundred and seventy-five.

ISAAC BLACK.
D. S. WHITE, JR.

I certify on honor that the above pay roll is correct and that I have actually paid to the Omaha Indians, the several sums therein stated this 15th day of ninth month in the year of our Lord one thousand eight hundred and seventy-five, and that in distributing the annuity I have required all able bodied male Indians between the ages of eighteen and forty-five years to perform service upon the reservation for the benefit of themselves or the tribe at a reasonable rate fixed by the agent in charge to an amount equal in value to the annuity paid them.

BARCLAY WHITE,
[SEAL.] *Superintendent Indian Affairs.*

Endorsed: Voucher No. 2. Abstract E. 3d qr., 1875.

Endorsed: Filed Feb. 14, 1902, Geo. H. Thummel, clerk.

79 Thereupon afterwards, to-wit:—on the 7th day of March, 1902, certificate of Charles P. Mathewson was filed in said case, which said certificate is in words and figures following, to-wit.

Allot. No.	Name.	Description.	Sec.	T.	R.	
684	Louis Saunsoci.....	N. E. ¼.....	25	25	9	1
91	Mary Harvey.....	E. ½ N. W. ¼.....	27	24	10	2
89	Henry Fontenelle.....	S. E. ¼.....	26	24	10	3
781	John Pilcher.....	S. E. ¼.....	16	25	8	4
749	Mary Jane Paul.....	W. ½ S. E. ¼.....	8	25	8	5
		N. ½ N. E. ¼.....	17	25	8	6
941	Susan J. Neals.....	N. E. ¼.....	23	26	8	7
537	Joseph La Flesche....	N. E. ¼.....	21	24	7	8
913	John Lieb.....	S. E. ¼ S. E. ¼.....	25	25	6	9
94	Annie "	N. W. ¼ S. W. ¼.....	27	24	10	10
582	Paulina Chase.....	W. ½ of N. E. ¼.....	30	25	10	11
373	Elsie M. Fuller.....	N. W. ¼ of S. W. ¼..	11	24	8	1
372	Susan E. "	S. E. ¼ of N. W. ¼..	11	24	8	2
374	Louis Fuller.....	N. W. ¼ of S. W. ¼..	11	24	8	3
331	Anna L. Fuller.....	S. W. ¼ of N. W. ¼..	11	24	8	4
369	George T. Fuller.....	N. E. ¼ of N. W. ¼..	11	24	8	5
370	Charles E. Fuller.....	N. W. ¼ of N. W. ¼..	11	24	8	6
375	Isabel Fuller.....	S. ½ of the S. W. ¼..	11	24	8	7
841	George T. Scott.....	Lots 5 & 6.....	12	25	7	8
844	Wesley Scott.....	N. E. ¼ of S. E. ¼...	12	25	7	9
753	John B. Moncravie..	N. ½ of S. E. ¼.....	11	25	8	10
953	Charles A. " ..	S. E. ¼ of S. W. ¼...	36	26	8	11
952	Henry C. " ..	S. W. ¼ of S. W. ¼...	36	26	8	12
951	Harrison Baylis.....	N. W. ¼ of S. W. ¼...	2	25	8	13
416	Amy Murphy.....	N. W. ¼.....	22	24	8	14
413	Gertrude Murphy.....	N. W. ¼ of N. E. ¼..	22	24	8	15
414	Alice Murphy.....	S. W. ¼ of N. E. ¼...	22	24	8	16
746	Eliza Wheeler.....	N. ½ of S. E. ¼.....	2	25	8	17
	" "	N. E. ¼ of N. W. ¼..	2	25	8	
887	Paul Wheeler.....	N. E. ¼ of S. E. ¼...	15	25	6	18
879	Elmer Wheeler.....	N. W. ¼ of S. W. ¼...	14	25	6	19
880	Lavaria Wheeler.....	S. W. ¼ of S. W. ¼...	14	25	6	20
889	Anna Wheeler.....	S. E ¼ of S. E. ¼....	15	25	6	21
747	Louisa Atkins.....	E. ½ of N. E. ¼.....	3	25	8	22
752	James B. Atkins.....	S. E. ¼ of S. W. ¼...	11	25	8	23

I, Chas. P. Mathewson, U. S. Indian agent for the Omaha & Winnebago agency, Nebraska, hereby certify that the foregoing names and allotments appear on the records of the Indian agent's office as allotments made under the provisions of the act of Congress of Aug. 7, 1882. That all the persons above named are the children of white men. The first eleven named are not now upon the
80 tribal rolls as they are dead. The last twenty-three named were dropped from the Omaha tribal rolls by order of the

Commissioner of Indian Affairs for the purpose of being enrolled with the Osage tribe of Indians. They still hold the above described allotments on the Omaha reservation.

Dated March 6th, 1902.

CHAS. P. MATHEWSON,
United States Indian Agent for Omaha & Winnebago Agency, Nebraska.

We, the heads of families, and individuals without families of the Omaha tribe of Indians, hereby acknowledge the receipt of * * * from Chas. P. Mathewson, U. S. Indian agent in the sums severally affixed to our names, being our proportion of annuity for the year (1901) one thousand and nine hundred and one.

No.		Names.	Age.	Sex.	Am't.	Total.
1*	1	Louis Neals B. H. S.	68	M	10 00	10.00 Louis Neals
	2	May C. Neals, H. F.	24	F	10.00	
2	3	Guy N. Lambert, son	1	M	10.00	10.00 Mary C. Neals
3	4	Mary La Flesche, , B. H. S.	69	F	10.00	10.00 Mary La Flesche
	10	Margeurite Diddock, H. Fl.	40	F	10.00	
4	11	Margeurite " dau.	5	F	10.00	
5	1215	Rosalie " "	5-12	F	10.00	30.00 Margeurite Diddock
	48	Clara Hogan, H. F.	29	F	10.00	
6	49	Larry J. son	9	M	10.00	
7	50	Ira "	8	M	10.00	
8	51	James H. "	6	M	10.00	
9	52	Leonora, dau.	3	F	10.00	50.00 Clara Hogan
10	489	Edward Farley, B. H. S.	18	M	10.00	
11	490	John, son	17	M	10.00	
12	491	Mary, dau.	15	F	10.00	
13	492	Lewis, son	13	M	10.00	
14	493	Fletcher, son	10	M	10.00	
15	494	Margaret, dau.	9	F	10.00	
16	495	La Flesche, son	8	M	10.00	
17	496	Edward Jr., son	4	M	10.00	70.00 Edward Farley
	670	[Charles Pilcher,]† B. H. S.	36	M	10.00	10.00 Charles Pilcher
	888	[Josephine Lamson],† H. F. died	40	F	10.00	
18	889	Birdie, dau.	15	F	10.00	
19	890	Florence, "	14	F	10.00	
20	891	Amos, son	11	M	10.00	
21	892	Grace, dau.	10	F	10.00	
22	893	Zoe, "	8	F	10.00	
23	894	Harriet "	7	F	10.00	
24	895	Wm. H. son	6	M	10.00	
25	896	George "	3	M	10.00	
26	897	Francis, "	2	M	10.00	100.00 George Lamson
	908	Harriet Pilcher,‡ H. F.	57	F	10.00	
	909	[Wm. H.]† son	16	M	10.00	20.00 Harriet Pilcher
	911	[Amelia Pilcher,]† B. H. S	18	F	10.00	10.00 Amelia Pilcher
	912	[Jennie Phillips,]† H. F.	29	F	10.00	
27	913	Blanche, dau.	9	F	10.00	
81						
28	914	Hazel, dau.	7	F	10.00	
29	915	Roy son	5	M	10.00	
30	916	Myrtle dau.	2	F	10.00	50.00 Jennie Phillips
	917	[Etta Brownrigg]† H. F.	38	F	10.00	
31	918	Glen son	8	M	10.00	
32	919	Marion dau.	7	M	10.00	
33	920	John L. son	2	M	10.00	40.00 Etta Brownrigg
	923	Meumbathe Cayou, H. F.	47	M	10.00	
34	924	Lee son	17	M	10.00	20.00 Meumbathe Cayou
35	925	Frank Cayou, B. H. S.	23	M	10.00	10.00 Frank Cayou
36	933	Andrew Lieb, H. F.	25	M	10.00	
	938	Mary Lieb H. F.	43	F	10.00	
37	939	George Lieb son	17	M	10.00	
38	940	Arthur son	9	M	10.00	
39	941	John "	7	M	10.00	40.00 Mary Lieb

No.		Names.	Age.	Sex.	Am't.	Total.
40	944	Silas Lieb H. F.	19	M	10.00	
41	944	Lizzie Wickersham, H. F.	30	F	10.00	
42	945	Arthur son	12	M	10.00	
43	946	Jessie "	7	M	10.00	
44	947	Henry "	4	M	10.00	
45	948	Ernest "	2	M	10.00	50.00 Lizzie Wickersham
46	967	Phillis Hull, B. H. S.	12	F	10.00	10.00 Mary Milliard, L. G.
47	1010	Elizabeth Lamson, H. F.	33	F	10.00	
48	1011	Alta dau.	12	F	10.00	
49	1012	Roy son	7	M	10.00	
50	1013	Mamie dau.	8	F	10.00	
51	1014	Frank son	6	M	10.00	
52	1015	Josephine dau.	3	F	10.00	60.00 Elizabeth Lamson
53	1072	Hiram Chase, H. F.	36	M	10.00	
	1073	Synthia Chase, wife	27	F	10.00	
	1074	[Isabelle]† dau.	15	F	10.00	
	1075	[Gertie]† "	11	F	10.00	
	1076	[Ethelyn]† "	9	F	10.00	
	1077	[Thurman]† son	7	M	10.00	
	1078	[Hiram]† "	5	M	10.00	
	1079	[Russell]† "	3	M	10.00	
	1080	[Harold]† "	1	M	10.00	90.00 Hiram Chase
54	1082	Eileen Lawless, B. H. S.	11	F	10.00	10.00 M. W. Murray, L. G.
55	1154	Garry Meyers, H. F.	28	M	10.00	
	1155	[Vonnie]† dau.	6	F	10.00	
	1156	[Josephine]† "	5	F	10.00	
	1157	Dora‡ wife	25	F	10.00	
	1158	[Bertha]† dau.	4	F	10.00	
	1159	[John E.]† son	½	M	10.00	60.00 Garry Meyers
	1168	Josephine von Felden, H. F.	32	F	10.00	
56	1169	Guy son	9	M	10.00	
57	1170	Garry "	7	M	10.00	
58	1171	Roy "	3	M	10.00	40.00
	1176	[Thomas Cabney,]† H. F.	37	M	10.00	
	1177	Nancy Cabney,‡ wife	3[illegible]	F	10.00	
	1178	[Marie]† dau.	7	F	10.00	
	1179	[Leon]† son	5	M	10.00	40.00
59	1180	Antoine Cabney, H. F.	68	M	10.00	
	1181	Anna Cabney‡ wife	60	F	10.00	
	1182	Reuben Cabney H. F.	25	M	10.00	
	1183	Lotta‡ wife	23	F	10.00	
82						
	1184	[Francis]† son	3	M	10.00	30.00 Reuben Cabney
	1185	[Francis Cabney,]† H. F.	33	M	10.00	10.00 Francis
60	1208	Emily Campbell H. F.	54	F	10.00	
61	1209	Eliza dau.	12	F	10.00	
	1210	[Gladys,]† granddaughter	2	F	10.00	30.00 Emily Campbell
62	1211	Ida Campbell, B. H. S.	18	M	10.00	
63	1212	William Campbell, B. H. S.	20	M	10.00	
64	1213	Pearly Campbell, H. F.	26	F	10.00	
65	1214	Fred G. Essex son born Oct. 12, 1901	1-6	M	10.00	20.00
66	1215	Florence Campbell, H. F.	30	F	10.00	
67	1216	William son	10	M	10.00	
68	1217	Mary dau.	9	F	10.00	
69	1218	Pearl "	7	F	10.00	
70	1219	Francis son	5	M	10.00	
71	1220	Florence dau.	3	F	10.00	
72	1221	Lilian "	1	F	10.00	70.00 Florence Hanicka
73	1231	Robert Lewis, orphan	11	M	10.00	
74	1232	Fred "	9	M	10.00	
75	1233	Antoine "	6	M	10.00	30.00
76	1239	Hershel Olsen	9	M	10.00	
77	1240	Blanch	6	F	10.00	20.00
78		Stephen Guitar, H. F.	60	M	10.00	
79		Louisa Gilpin	24	F	10.00	

[* Figures in left-hand margin, from 1 to 79, inclusive, in red ink in copy.]
[† Inclosed in red brackets in copy.]
[‡ Underlined in red ink in copy.]

I, Charles P. Mathewson, hereby certify that I am the United States Indian agent for the Omaha & Winnebago agency, Nebraska. That the names as they appear above are taken from the tribal annuity roll which was made up by me and one of the records of my office. That I know from official inquiry and personal information that those persons numbered in red ink to the left are the children of white men, and number from one to seventy-nine inclusive. That those underlined in red ink are white women married into the tribe and recognized as Indians. That those whose names are included in red brackets are the children of white women.

Dated Mar. 6, 1902.

CHAS. P. MATHEWSON,
U. S. Indian Agent for the Omaha & Winnebago Agency, Nebraska.

83 Allottee.	No.		Sec.	T.	R.	Acres.
Theresa Fuller.....	390	N. W. ¼.....	14	24	8	160
Josephine P. Filson ...	458	N. E. ¼.....	27	24	8	160
Amy Murphy.....	416	N. W. ¼.....	22	24	8	160
Susette La F. Tibbles..	552	N. W. ¼.....	24	24	7	160
Rosalie Farley.	564	S. E. ¼.....	26	24	7	160
Madeline Scott.....	743	N. E. ¼.....	2	25	8	160
Elizabeth Baylis.....	744	N. W. ¼.....	2	25	8	160
Meumbathe Cayou.....	893	N. E. ¼.	23	25	6	160
Victoria Hull.....	894	N. W. ¼.....	25	25	6	160
Mary Lieb.....	910	S. W. ¼.....	25	25	6	160
Emily Campbell.....	890	E. ½ of E. ½.....	22	25	6	160
Eliza Wheeler.....	746	N. ½ of S. E. ¼.....	2	25	8	
" "	746	N. E. ¼ of N. W. ¼.	2	25	8	
" "	746	S. E. ¼ of S. E. ¼....	2	25	8	160
Louisa P. Atkins.....	747	E. ½ of N. E. ¼.....	3	25	8	
" " "	747	N. E. ¼ of S. E. ¼...	3	25	8	
" " "	747	S. W. ¼ of S. W. ¼..	11	25	8	160
Julia B. Provo.....	809	W. ½ of N. E. ¼.....	27	25	8	
Julia B. Provo.....	809	N. E. ¼ of S. E. ¼...	27	25	8	
Julia B. Provo.....	809	S. W. ¼ of S. W. ¼	27	25	8	160

I, Chas. P. Mathewson, hereby certify that all of the above named persons are allottees of the Omaha tribe of Indians allotted under the provisions of the act of Congress approved Aug. 7, 1882. That each of the above named was allotted 160 acres of land as the head of a family. That each of said allottees was married to a white

man with whom they were living at the time of the allotment.

894*

That No. 552, Susette La. F. Tibbles, has no children, and the family of which she was recognized as the head consists of herself and her white husband. From records of my office.

Dated March 6, 1902.

CHAS. P. MATHEWSON,
United States Indian Agent for Omaha & Winnebago Agency, Neb.

Allot. No.	Name.	Allot. No.	Name.
44	Naktesaewe Stabler	50	Sophia Blackbird
163	Harriet Wolf,	232	Tawaon Watson,
259	Phebe Webster	408	Da ah ma
424	Emily Milton	427	Meansheahne
498	Umbathagthe Peabody,	572	Rachael Furnas
600	Polly Levering,	617	Metaehe Parker,
628	Harriet Sarpy,	661	Ponsawe Fox
728	Nellie Wood,	749	Mary Jane Paul,
794	Lydia Thomas,	825	Watombathe Wood.

84 I hereby certify that the records of my office show that the above named persons received allotments of 160 acres each as the head of a family under the provisions of the act of Congress approved Aug. 7, 1882. That at the time of the allotment none of these persons had minor unmarried children living with them who constituted a family.

Dated March 6, 1902.

CHAS. P. MATHEWSON,
United States Indian Agent for Omaha & Winnebago Agency, Neb.

Endorsed: Filed Mar. 7, 1902, Geo. H. Thummel, clerk.

85 Thereupon afterwards, to-wit: on the 23rd day of April, 1902, patent was filed in said case, which said patent is in words and figures following, to-wit:

960.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States an order bearing date May 9, 1898, from the Secretary of the Interior, accompanied by a return dated April 25, 1898 from the Office of Indian Affairs, with a list of allotments of land made to Indians upon the Omaha Indian reservation, in the

[* In pencil in copy.]

State of Nebraska, approved May 9, 1898, by the Secretary of the Interior under the fifth section of the act of Congress approved August seventh, anno Domini one thousand eight hundred and eighty-two, entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska, and for other purposes."

And whereas, Me-man-she-ha-ne is designated on said list as an allottee and is entitled to the following described tract of land, viz: the northeast quarter of section thirteen in township twenty-five, north of range six east of the sixth principal meridian in the State of Nebraska, containing one hundred and sixty acres.

Now know ye, that the United States of America, in consideration of the premises and in accordance with the provisions of the sixth section of said act of Congress of the seventh day of August, anno Domini one thousand eight hundred and eighty-two,
86 has given and granted, and by these presents does give and grant, unto the said Me-man-she-ha-ne and to her heirs the tract of land above described but with the stipulation contained in the said sixth section of said act of Congress, that this patent "shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indians to whom such allotment shall have been made, or in case of his decease, of his heirs according to the laws of the State of Nebraska, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void; provided, that the law of descent and partition in force in the said State shall apply thereto after patents therefor have been executed and delivered:"

To have and to hold the said tract of land, with the appurtenances unto the said Me-man-she-ha-ne and to her heirs forever, with the stipulation aforesaid.

In testimony whereof, I, William McKinley, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United
87 States the one hundred and twenty-third.

By the President:

WILLIAM McKINLEY,
By F. M. McKEAN, *Secretary.*

[SEAL.]

C. H. BRUSH,
Recorder of the General Land Office.

Recorded vol. 2, p. 464.

Endorsed: Filed Apr. 23, 1902, Geo. H. Thummel, clerk.

88 Thereupon afterwards, to-wit: on the 23rd day of April, 1902, original patent was filed in said case, which said patent is in words and figures following, to-wit:

962.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States an order bearing date July 26, 1898, from the acting Secretary of the Interior, accompanied by a return dated January 27, 1897, from the Office of Indian Affairs, with a list of allotments of land made to Indians upon the Omaha Indian reservation, in the State of Nebraska, approved July 26, 1898, by the Secretary of the Interior under the fifth section of the act of Congress approved August seventh, anno Domini one thousand eight hundred and eighty-two, entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska, and for other purposes."

And whereas. Lewis Dick, alias Dick Hamilton, is designated on said list as an allottee, and is entitled to the following described tract of land, viz: the southwest quarter of section thirty, in township twenty-four, north of range nine, east of the sixth principal meridian in Nebraska, containing one hundred and sixty acres.

Now know ye, that the United States of America, in consideration of the premises and in accordance with the provisions of the sixth section of said act of Congress of the seventh day of August, anno Domini one thousand eight hundred and eighty-two, has given and granted, and by these presents does give and grant, unto the

89 said Lewis Dick, alias Dick Hamilton, and to his heirs the tract of land above described, but with the stipulation contained in the said sixth section of said act of Congress, that this patent "shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indians to whom such allotment shall have been made, or in case of his decease, of his heirs according to the laws of the State of Nebraska, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: Provided, that the law of descent and partition in force in the said

State shall apply thereto after patents therefor have been executed and delivered:"

To have and to hold the said tract of land, with the appurtenances unto the said Lewis Dick alias Dick Hamilton, and to his heirs forever, with the stipulation aforesaid.

In testimony whereof, I William McKinley, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this eleventh day of August, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-third.

By the President:

[SEAL.]

WILLIAM McKINLEY,
By E. M. McKEAN, *Secretary.*
C. H. BRUSH,
Recorder of the General Land Office.

Recorded vol. 2, p. 466.

Endorsed: Filed Apr. 23, 1902, Geo. H. Thummel, clerk.

90 Thereupon afterwards, to-wit: on the 18th day of August 1902, copy of census roll, etc., was filed in said case, which said copy is in words and figures following, to-wit:

A list of the half breed and mixed blood Indians, composed of the Omahas, Ioways, Otoes, and Yankton and Santie bands of Sioux, entitled under the treaty of July 15th, 1830, to participate in the benefits of the half breed reservation lying between the Great and Little Nemaha rivers, in Nebraska Territory, and for the fulfillment of which treaty stipulations provision was made by the 5th (4″) section of Congress, approved July 31st, 1854.

Name.	Family or single.	Sex.	Age.	Degree of blood.	Band.	Orphan.	Guardian.	How appointed.	Residence.	Admitted or rejected.	No. of residence affidavit.
420 Margarett Sloan..	Family.	Female.	.....	½	Omaha.	.....	.....	Natural.	Half breed reservation.	Admitted.	28
421 Wm. Sloan	"	Male...	.....	¼	"	.....	.....	"	"	"	
422—John Sloan.....	"	" ...	.....	¼	"	.....	.....	"	.....	"	
Artemiecia Sloan.	"	Female.	.....	¼	"	.....	.....	"	.....	"	
432—Antoine Barada..	"	"	40	½	"	.....	.....	"	.....	"	29
433—Enphazie Barada.	"	"	20	¼	"	.....	.....	"	.....	"	30
434—Michelle Barada..	"	Male...	18	¼	"	.....	.....	"	.....	"	
435—Clara Barada....	"	Female.	11	¼	"	.....	.....	"	.....	"	
436—Juliette Barada..	"	"	9	¼	"	.....	.....	"	.....	"	
438—Mary Bono... ...	Single..	"	.....	½	"	.....	.....	"	Omaha mission.	"	Admitted on evidence.

I hereby certify that the foregoing census roll of the claimants to the half breed reserve between the Great and Little Nemaha rivers in the Territory of Nebraska, has been obtained in conformity to the instructions of the department of Indian affairs as near as practicable, and to the best of my knowledge is correct.

J. L. SHARP,

Com. to Take the Census Roll of Claimants to Half Breed Reserve in Territory of Nebraska.

List of those Subsequently Admitted.

William Barada..... Male..... 8..... ¼ blood Omaha.. . ... Admitted on affidavit of Margaret Sloan.
Celestine..... Female... 2.. ... ¼ " " ..... Children of Antoine Barada.

Defendant consents that this sheet may be filed as evidence with like force and effect as if duly certified by the department.

JNO. L. WEBSTER, *Att'y for Defendant.*

Endorsed: Filed Aug. 18 1902 Geo. H. Thummel, clerk.

92 Thereupon afterwards, to-wit:—on the 21st day of August, 1902, stipulation of facts was filed in said case, which said stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Doc. "T," No. 174. Stipulation of Facts.

In the above entitled case the parties do hereby stipulate to the following facts, and matters to be true for the purpose of this suit.

First. That Michael Barada was a free born full blood white man, of French descent, and married Tuningletha or Taeglaha Hacienda, a full blood Omaha Indian woman.

Second. That there *was* born to said Michael Barada and his said wife, a daughter named Margaret Barada, and two named Mary Jane Paul, *née* Barada, and Popain, mother of John Pilcher, and a son named Antoine Barada. That said Margaret intermarried with Thomas Sloan, as hereinafter mentioned and from whom descended the Sloan and Frost families hereinafter mentioned. That from Antoine Barada descended the Barada and the Peters, Sailor, Mitchell and Kuhn families hereafter mentioned.

Third. That said Margaret was born about 1805 and was educated in the city of St. Louis and could speak the French and English languages.

93 That she continued to live in the city of St. Louis from the year 1811, until her marriage in 1830 and thereafter as appears in subsequent paragraphs of this stipulation until about the year 1855.

Fourth. That said Margaret Barada married Thomas Sloan a free born full blood white man and a citizen of the United States, and of Irish descent, and which said marriage took place in the city of St. Louis about the year 1830 and where both parties at the time resided.

Fifth. That Thomas Sloan and his wife Margaret Sloan continued to maintain their domicile in the city of St. Louis until 1855, but Margaret Sloan had made a visit to Omaha agency, Bellevue, 1854. In 1855 Thomas Sloan became employed as an engineer on a Missouri River steamboat and Margaret Sloan came to Bellevue, Nebraska, the then Omaha agency, and remained about one and a half years, and in 1857 went with her husband and children, hereinafter named, to the Nemaha reservation. That after

the selection of land for allotment by Margaret Sloan on the Nemaha reservation, hereinafter more particularly referred to, the said husband, Thomas Sloan was employed by the Government to superintend the construction of a mill on the Omaha Indian reservation, and he and his family removed there and built a home and remained there during 1858 and 1859, when Thomas Sloan with his family returned to the Nemaha reservation and the family resided there or in that vicinity until 1881.

Sixth. That while Thomas Sloan and family continued to reside on the Nemaha reservation, his wife Margaret Sloan under date of Sept. 10, 1860, received a patent No. 128 for 320 acres of land on the so called Nemaha reservation, said patent being
94 issued under sec. 5 (4) of act of Congress of July 31, 1854, (10 U. S. Stats. 332) to carry into effect article 10 of treaty of July 15, 1830, (7 U. S. Stats. 328).

Seventh. That there *was* born to the said Thomas Sloan and his wife Margaret two sons William E. Sloan and John M. Sloan, and one daughter Artemesia Frost *née* Sloan. All born in St. Louis where their parents resided, the dates of their birth being about as follows: William E. Sloan, 1832, John M. Sloan, 1840, Artemesia Sloan 1848.

Eighth. That said William E. Sloan married Catherine Korf a full blood white woman, which marriage took place in the city of St. Louis in the year 1861 where both parties then resided.

Ninth. That to said William E. Sloan and his wife Catherine there was born a son Thomas L. Sloan, who with John M. Sloan and Artemesia Frost make claim as heirs of Margaret Sloan, and who also have separate suits pending in their own separate and individual rights for allotments of land. To-wit: No. 176 "T," No. 462 doc. "T" and No. 579 doc. "T."

Tenth. That William E. Sloan received an allotment No. 274 on the so called Nemaha reservation for land aggregating about 320 acres and received a patent therefor under the act of July 31, 1854, sec. 5, (4) (10 U. S. Stats. 332) and article 10 of the treaty of July 15, 1830 (7 U. S. Stats. 328–330).

Eleventh. That John M. Sloan and Artemsia Frost *née* Sloan, also each received an allotment and patent for 320 acres of land each on the so called Nemaha reservation under said act and treaty, mentioned in the preceding paragraph of this stipulation.

Twelfth. That Margaret Sloan and family continued to reside from 1860 to 1881 on the land allotted to her on the Nemaha reservation and in Nemaha City, Nebraska, and Margaret Sloan
95 moved to the Omaha Indian reservation about the year 1881. That Thomas Sloan, the husband, did not come to the Omaha reservation. He had been in ill health, went East for treatment, and died in Aspen, Colorado, 1893, at the home of John M. Sloan.

Thirteenth. That Thomas L. Sloan was born in the city of St. Louis in 1863, where his parents then resided, and Thomas L. Sloan continued to reside in St. Louis until 1873, when he removed to the

Nemaha reservation. His father William E. Sloan died in 1865, and his mother continued to reside in St. Louis and still lives there at the date of the signing of this stipulation. That Thomas L. Sloan, when he went to the Nemaha reservation, lived with his grandmother, Margaret Sloan, until 1877, when Thomas L. Sloan went away from home, visiting various places including Oregon and Washington on the Pacific coast, and a trip to England, Holland and Belgium in Europe, and returned to Nemaha reservation in 1880 and then again met his grandmother, Margaret Sloan, who was then a cook in a hotel at Nemaha City, in Nemaha county, Nebraska, near the Nemaha reservation.

Fourteenth. That Thomas L. Sloan came to the Omaha reservation in April 1881, and took up his residence with Mary Jane Paul, a sister of Margaret Sloan, who then lived on Omaha creek in section 3, T. 25, R. 8. Mary Jane Paul removed to the Indian Territory in 1890 and is now dead. She had married into the Osage tribe, and went to Indian Territory to live with said tribe.

Fifteenth. Margaret Sloan came to the Omaha reservation in July 1881, and Thomas L. Sloan thereafter had his home with Margaret Sloan until 1891, the N. E. ¼ of sec. 20, T. 24, N. R. 8 E. That in 1891 Thomas L. Sloan went to the town of Pender where he has since lived, engaged in the practice of law, except a period of
96 four years when he lived at and was employed as clerk at Omaha and Winnebago agency and is married to a full blood white woman.

Sixteenth. That Thomas L. Sloan primarily made or caused to be made the improvements, such as they are, on said N. E. ¼ of sec. 20, T. 24, R. 8 in the name of Margaret Sloan. That part the time since 1891 Margaret Sloan (until her death in 1898) lived on said land and part of the time lived with her daughter Artemesia Frost, and with John Pilcher, a nephew and with Thomas L. Sloan in the town of Pender.

Seventeenth. John M. Sloan, a son of Margaret Sloan, and her husband, Thomas Sloan, was born in St. Louis in year 1840, and lived in St. Louis, with his parents until 1855, when they moved to Bellevue, Nebraska, and remained there with the family, until 1857, and with the family in 1858 and 1859, while his father had charge of the mill on the Omaha reservation, and then went with the family to the Nemaha reservation, and remained there some 20 years to about 1880, when he removed to Colorado where he has since resided, and his home is at the town of Aspen State of Colorado. He is an engineer by trade and married to a full blood white woman. He never had a residence on the Omaha reservation. His wife came to Pender in 1893 on a visit to Thomas L. Sloan and she and Thomas L. Sloan agreed upon the N. ½ of the N. W. ¼ of sec. 35, T. 25, R. 7, and the N. E. of N. E. and N. E. of S. W. of sec. 34, T. 25, R. 7, as the land which should be claimed for allotment in the name of John M. Sloan.

Eighteenth. That Artemesia Frost *née* Sloan was born in St. Louis about 1848, and continued to live with her parents Thomas Sloan and Margaret in St. Louis, and at Bellevue and on Nemaha reservation as did John M. Sloan, as set out in preceding paragraph, until 1870, when she married Leonard L. Frost, who was
97 a white man having not more than ¼ Indian blood, but that not being blood of the Omaha Indian tribe. That she and her husband continued to live on the land patented to her on the Nemaha reservation, as set out in paragraph eleventh preceding, until 1874 when she and her family removed to the Omaha reservation, and in 1875 drew annuity money for herself and children and remained about 2 years, and went back to Nemaha reservation and remained about one year and then removed to town of Highland, State of Kansas where they educated their children. They remained in Kansas until 1893 when Artemesia with her children came to Omaha reservation and her husband came in 1894.

Nineteenth. That there *was* born to Leonard L. Frost and his wife Artemesia the following children, Philemon H. Frost, Sarah F. McCreary, *née* Frost, Charles Frost, and Leonard Frost, who have suits pending in their personal and individual names, and also two minor children Mary and Frank Frost.

That the dates of the birth of the children *is* as follows: Philemon H. Frost, 18—, Sarah A. McCreary, *née* Frost, 18—, Charles Frost, 18—, Mary Frost, 18—, Frank Frost, 18—.

Twentieth. That the Frost family did not make claim to any particular lands for allotment until 1893, when Artemesia Frost made claim for herself and her said children of the lands in their respective petitions described, except in this that Artemesia Frost claims that when she was on the reservation in 1874 and 1875 set out in eighteenth paragraph of this stipulation, she settled upon, broke and improved certain land, but which she abandoned and which was afterward patented to Benjamin Hallowell. Her husband was then and is at this date still living, and the family all living together at this date, including the said children excepting
98 Sarah F. McCreary who is living with her husband and Charles Frost who has lately married, and further excepting in this that the children continued to be educated in Highland, Kansas, and the father maintained a home there during the winter for the use of the children.

Twenty-first. Sarah F. McCreary *née* Frost married Finley McCreary, a full blood white man, a citizen of United States in the year 1893 at Highland, Kansas, where her husband resided and they continued to reside in Kansas until 1893 when they removed to the Omaha reservation where they still reside. Have no children. That Charles Frost married a full blood white woman in the year 1899 and lives on the reservation. He attended the agency school about 1895 and Indian school at Hampton, Va., 1896.

Twenty-second. That no one of either the Sloan, Barada or Frost families mentioned in this stipulation received or had an assign-

ment or certificate of assignment under article 4, of the treaty of March 6, 1865 (14 U. S. Stat. 667). That a schedule of selections of land in severalty in accordance with said fourth article showing the names of those entitled to assignments of lands and their respective tracts, was duly certified by the chiefs of the Omaha tribe and certified and submitted by the Omaha Indian agent to the Commissioner of Indian Affairs December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871. That none of the names of the respective Sloan, Barada or Frost families in this stipulation mentioned appear on said schedule. See stipulation doc. "T." No. 267 on this same point.

Twenty-third. That in a suit lately pending in the circuit court of the United States for the district of Nebraska and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas
99 L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, were complainants and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Wippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors, or any of the immediate antecedents or descendants of said parties so far as I know their names," and which said report is a matter of record in this court. And none of the names of any of the parties plaintiffs in the pending suits appear on said annuity pay rolls. That Margaret Sloan and Antoine Barada and Mitchell Barada received certain annuity payments for themselves and children, between the years 1855 and 1865 as appears in a certified record on file. And Artemesia Frost received a like annuity payment in 1875 as appears by said record. That Antoine Barada and Mu-shu-numpa-shi is one and the same
100 person. That Agent Spencer paid annuity to Margaret and Thomas Sloan in 1891 and that an issue of annuity goods was made to Margaret Sloan in 1885, as per receipt to agent, a copy of which may be filed as explanatory of this annuity. It is agreed that plaintiffs never received any other annuity than above

recited appearing of record, but that plaintiffs may introduce evidence of payment of other annuities if they are so advised.

Twenty-fourth. That in 1883 Margaret Sloan made parol application to Alice C. Fletcher, U. S. allotting agent, for allotment of lands on the Omaha Indian reservation, and that Alice C. Fletcher as U. S. allotting agent, decided that Margaret Sloan and her descendants were not entitled to allotments under the act of 1882, and under date of April 28, 1884 made her official report to the Commissioner of Indian Affairs adversely to the right of Margaret Sloan and her descendants, to have allotment of land of the Omaha Indian reservation and which report was approved by the Commissioner of Indian Affairs under date of May 9, 1884. Said report and order of approval are as follows:

United States Indian Service.

OMAHA AND WINNEBAGO AGENCY, *April* 28, 1884.

Hon. H. Price, Com'r of Indian Affairs.

SIR: I would respectfully submit the following decision in the case of Mrs. Margaret Sloan for approval.

Margaret Sloan is the daughter of a full blood Omaha woman and Michael Barada, a white man. She was born at Fort Calhoun Nebraska, and taken early in life to St. Louis, Mo., to be
101 educated, where she married Thomas Sloan a white man and afterward lived in St. Louis, Mo., and upon her allotment of land given her as a half breed Omaha in the Nemaha reservation. During her youth and early married life she made a few visits to her relatives living with the Omaha tribe. In 1857, Thomas Sloan was appointed to take charge of the mill then being built on the Omaha reservation and removed thither with his wife Margaret and their three children, William 19 years, John 11 years and Artemesia (now Mrs. Frost) 4 years of age. Mr. Sloan remained at the mill in the Government employ for two or three years. This period constitutes the only residence of Mrs. Sloan upon the Omaha reservation up to 1881, when she returned here with her grandson Thomas Sloan, the only child of her deceased son William who entered upon land and has made considerable improvements on his claim.

Mrs. Sloan claims a right to an allotment under the act of August 7, 1882, as she states that her husband, Thomas Sloan went into the army after he left the mill on the Omaha reservation and was in the army in the year 1865 and that as he entered the army from this place his residence was the Omaha reservation and her constructive residence was that of her husband's.

Her claims have been fully investigated in an open council of the tribe and I have waited two months for further evidence promised by Mrs. Sloan tending to establish her husband's entrance into the army from the reservation but feel it now to be my duty to no longer delay action in her case.

According to evidence given by the Indians, Thomas Sloan and his family left the reserve in 1860, and according to all I can learn, his point of departure into the army can have no bearing on her case. By her own statement and the testimony of other persons, Mrs. Sloan was not living with the Omahas at the time of the
102 treaty, of 1865, but upon her land on the Nemaha reserve, nor do the tribe in any way admit her claim to land here.

Therefore in view of all the evidence I have been able to gather, I am constrained to decide that neither Mrs. Margaret Sloan nor her descendants are legally entitled to allotments of land upon the Omaha reservation under the act of August 7, 1882.

I enclose the sworn statement of Thomas Sloan as to his whereabouts in 1865 which is the only written evidence furnished me by Mrs. Sloan.

Very respectfully,

A. C. FLETCHER,
Special U. S. Indian Agent."

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *May 9th*, 1884.

Miss A. C. Fletcher, U. S. special agent, Omaha and Winnebago agency, Nebraska.

MDLLE: Referring to your letter of April 28, 1884, asking that your decision in the case of Mrs. Margaret Sloan, applicant for an allotment of land on the Omaha reservation, under the act of August 7, 1882, be approved, I have to say that I concur in the views expressed in your letter, and therefore approve your decision "that neither Mrs. Margaret Sloan nor her descendants are legally entitled to allotments of land upon the Omaha reservation under the act of August 7, 1882."

Very respectfully,

H. PRICE,
Commissioner.

103 Twenty-fifth. That under date of August 27, 1890, Hon. T. J. Morgan, Commissioner of Indian Affairs instructed in writing Robert H. Ashley, United States Indian agent for the Omahas, to require Frank A. Peters, a descendant of Antoine Barada, and others of a like class," to remove from the Omaha reservation. Should they fail to comply the agent was instructed to report the fact to the Commissioner of Indian Affairs, "giving the names of the parties and stating all the facts in connection therewith."

That the agent did serve notice on Frank A. Peters and others of like class including Celestine B. Kuhn, William Barada, Luke Sailors, Walter Peters, Margaret Sloan and Thomas L. Sloan to leave the Omaha reservation, a copy of one of said notices being that to Celestia Kuhn is herewith inserted and reads as follows:

OMAHA AND WINNEBAGO AGENCY,
NEBR., *October 15th*, 1883.

Mrs. Celestia Kuhn, Omaha reservation, Nebraska.

MADAM: The honorable Commissioner of Indian Affairs by letter of Oct. 5th, 1883, makes a decision in your case against your right to hold land on the reservation.

The points cited are as follows, viz:

1st. That neither Antoine Barada, the father, nor his daughter were living with the Omaha tribe of Indians at the time of the treaty of 1865.

2nd. That Antoine Barada and his family were provided for on the Nemaha half-breed tract under treaty of July 15th, 1830.

3rd. Neither the name of Celestia Kuhn, nor the father, Antoine Barada, appears in the schedule duly certified by the chiefs,
104 showing the names of those who were properly entitled to selections of land under treaty of 1865 and if she was not entitled then, she is not now.

4th. "She has in no manner been" identified with the tribe since" that time; has not been adopted "into the tribe nor lived with them," until the very recent period spoken of." The Hon. Commissioner of Indiam Affairs after citing the above points as the grounds of his adverse decision then issues an order to me as follows:

"I have to direct that "you take immediate steps to remove "them beyond the limits of the" reservation, using your police "force for that purpose if it shall "be found necessary."

You see that the above order is imperative and I have no choice but to obey.

You will therefore please take such steps within a reasonable time, say ten days, as will relieve me of any unpleasant duties in obedience to the above order.

Very respectfully, GEO. W. WILKINSON,
U. S. Indian Agent."

And with reference to the Sloans the agent reported to the department under date of Oct. 17, 1890, as follows:

"I have the honor to report in addition to that given in my letter of September 15th, 1890, in reply to office letter of Aug. 27th, L. 25845–90 'that I did on the 14th day of October, 1890, give written notice to Thomas L. Sloan and Margaret Sloan to leave the Omaha reservation under instructions of office letter of August 27th
25845 L. 90." I would say in explanation that the Omaha
105 Indians in council, on 7th day of October discussed this matter with the Sloans, and it was almost the unanimous opinion and wish that they be removed from the reservation the same as Peterson (Peters?) and others. I am unable to find where the Sloans have any more right than the others mentioned, and

take them to be of 'like class' as mentioned in yours of the 27th of Aug.

I would also say that Mr. Sloan informed me that he would not leave.

I have understood from Mr. Sloan that he had a better claim than Peterson (Peters?) *et al.*, but in what respect I am not informed and I am unable to find anything on file in this office to give me any information."

Twenty-sixth. That under date of November 14, 1888, acting upon a petition filed by the Omaha Indians, which petition is more particularly set out in the stipulation on file in the suit of Frank A. Peters, the Commissioner of Indian Affairs, made his report on the status of Frank A. Peters and other mixed bloods to the Secretary of the Interior and therein authority was requested to remove Frank Peters and others of his class from reservation. This request was granted by the Secretary of the Interior on December 5, 1888, and notice was accordingly served by the agent upon the parties affected by the order and ruling, but they refused to remove. It was recommended by the Commissioner of Indian Affairs that the Secretary of War be requested to place sufficient troops at the disposal of Indian agent to affect the removal of the intruders named in the report, and such others as the agent might designate upon the reservation under similar state of facts to that of Frank Peters. On January 12, 1891, upon the earnest request of a delegation of Omahas then in the city of Washington, the department repeated
106 this recommendation of October 2, for military aid in ejecting said intruders. Before any removal could be effected the agent was enjoined from making such removal by a suit brought in the circuit court of the United States for the district of Nebraska hereinafter referred to.

Twenty-seventh. On January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, in a letter to Robert H. Ashley, United States Indian agent, directed among other things as follows:

"You will find enclosed with this a copy of a letter addressed by me under date of the 12th inst., to certain Omaha delegates who are now in this city, by which you will observe certain parties therein named who belong to a class of trespassers on the Omaha reservation, and who are not entitled to lands or benefits under the act of August 7, 1882, before referred to, and are not to be enrolled by you or allowed to share in the payment you are about to have made. The names of those specially objected to by the delegates are William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank A Peters, Walter Peters and Mr. Sailors and their families, and you are not to enroll or pay any of them."

Twenty-eighth. That Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as

intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian Agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which suit said
107 complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer and proofs were taken and subsequently on the 2 .th day of April, 1893, a decree of dismissal was entered in said cause as follows:

"*Bill Dismissed Pl'ffs for Costs.*

It is held that the President is authorized to make such disposition of money and property as he may think advisable for the benefit of the Omaha Indians, and that his authority to do so cannot be restricted by injunction; and on that ground and for these reasons the bill is dismissed.

(S'g'd) ELMER S. DUNDY, *Judge.*"

(Journal "R" 425.)

And which said judgment and decree was not appealed from, but remains in full force and effect.

Twenty-ninth. Artemesia Frost, a daughter of Margaret Sloan having made claim for allotment of land on the Omaha Indian reservation, the matter was reported to the department which held by ruling under date of June 21, 1897, that Artemesia Frost was not entitled to an allotment of land on the Omaha Indian reservation, and — which ruling the department said as follows:

"By her own admission, Mrs. Frost's birthright claim has been extinguished. To admit her present claim would be an injustice to those of the tribe who have never received allotments and who alone are entitled to participation in the division of the lands in the diminished reserve; would also be against public policy,
108 and a violation of the rules and regulations of the department, which prohibit more than one allotment to an Indian for any reason whatever."

Thirtieth. That no one of the Sloan family, or their ancestors mentioned in this stipulation received or had an assignment or certificate of assignment under article 4, of the treaty of March 6, 1865, (14 U. S. Stat. 667). That a schedule of selections of land in severalty in accordance with said fourth article and the prescribed rules and regulations of the Office of Indian Affairs, approved by

the Hon. Secretary of the Interior October 26, 1867, showing the names of those entitled to assignments of lands, and their respective tracts was duly certified by the chiefs of the Omaha tribe, and certified and submitted by the Omaha Indian agent to the Commissioner of Indian Affairs, December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871. That none of the names of the respective Sloan, Barada, Peters, or Frost families in this stipulation mentioned appear on said schedule.

Thirty-first. The Commissioner of Indian Affairs under date of April 24, 1899, appointed John K. Rankin, U. S. special agent to make allotment of lands to the Omaha tribe of Indians, under the clause of the Indian appropriation act of March 3, 1893, amendatory of the act of August 7, 1882, and said John K. Rankin in May 1899 arrived at the Omaha Indian reservation and continued in the performance of his duty as such special allotting agent, until February 1900, and that the allotments by him made hereinafter referred to, were completed in the month of January, 1900, and the schedule of said allotments *were* signed by the said John K. Rankin,
U. S. special agent, and transmitted by him to the Commis-
109 sioner of Indian Affairs, and which said schedule of allotments was approved by the Commissioner of Indian Affairs, and by the Commissioner transmitted to the office of the Secretary of the Interior, and approved by the Secretary of the Interior and transmitted from the office of the Secretary of the Interior to the General Land Office under date of February 6, 1900, for the purpose of having patents issued to the allottees, and that patents to respective allottees were issued under date of April 11th, *either* to the respective allottees hereinafter mentioned for the lands to them respectively allotted.

Thirty-second. That the said John K. Rankin, U. S. special agent declined to make allotments to the respective complainants, on the ground that they were not entitled to lands claimed by them respectively.

But the said John K. Rankin did make allotments of some of the lands claimed by the respective complainants to various other persons as follows, to-wit:

The heirs of Margaret Sloan make claim in her name to the N. E. ¼ of section 20, township 24, range 8, as per paragraph- 15 and 16 of this stipulation, and which said land has been reserved pending the result of this litigation.

That the heirs of Margaret Sloan in her name also make claim to the S. W. ¼ of the N. E. ¼ and the S. E. ¼ of the N. W. ¼ of section 35, township 25, north range 7, which has been allotted and patented to other persons as follows: The S. W. ¼ of the N. E. ¼ of said section 35, to Poncasa Grant, and the S. E. ¼ of the N. W. ¼ of section 35, to Me-gra-ta-ne Grant.

Thirty-third. John M. Sloan in his petition makes claim to the
N. ½ of the N. W. ¼ of section 35, and the N. E. ¼ of the N. E.
110 ¼ and the N. E. ¼ of the S. W. ¼ of section 34, township 25,

range 7, and which said lands have been allotted and patented to other persons as follows:

The N. ½ of the N. W. ¼ of section 35, to Me-gra-ta-he Grant and John Grant, and the N. E. ¼ of the N. E. ¼ of section 34, to Charles Grant, and the N. E. ¼ of the S. W. ¼ of section 34, has not been allotted.

That Thomas L. Sloan makes claim to lots (5), (6) and (7) of section 26, and lot (1) of section 35, township 25, range 6, and the S. ½ of the N. E. ¼ of section 20, township 24, range 8, which has not been allotted to any other person.

That Artemesia Frost selected for herself and her minor children, Mary Frost and Benjamin Frost the following lands to-wit: The S. ½ of the N. W. ¼ of section 9, township 25, range 7 east of the 6th P. M., in Nebraska, containing 80 acres. Also a certain adjoining tract of land containing 78 acres and more particularly described as follows:

Commencing at a point at the N. E. corner of the S. ½ of the N. W. ¼ of section 9; running thence north 52 rods; thence west 240 rods; thence south 52 rods; thence east 240 rods, to the place of beginning. And for her daughter, the plaintiff Mary Frost, the S. ½ of the N. E. ¼ of section 8 township 25, range 7. And for her said minor son, the said Benjamin F. Frost, the north ½ of the S. E ¼ of section 7, township 25, range 7, containing 80 acres. And which said lands has been reserved from allotment pending the result of this litigation.

That Philemon H. Frost makes claim to the S. ½ of the N. E. ¼ of section 34, township 25, range 8, and which said land has been allotted to Frank Robinson and patent issued to him therefor, April 11, 1900.

111 That Leonard L. Frost makes claim to lots (5) and (6) and the S. E. ¼ of the N. W. ¼ of section 12, township 25, range 6. That lots (5) and (6) have been allotted to Leon C. Fontenelle and the S. E. ¼ of the N. W. ¼ of section 12 to Mehashahane Hallowell.

Sarah F. McCreary makes claim to the S. E. ¼ of section 11, township 25, range 6. That the N. ½ of the S. E. ¼ of section 11 has been allotted to Ethelyn Chase and patent issued April 11, 1900; and that the S. ½ of the S. E. ¼ of section 11, is among the lands reserved for the Monette family.

That Charles Frost makes claim to S. E. ¼ of section 8, township 25, north range 7 east. and which land has been reserved, and is among the lands hereafter described as reserved for the Frost family.

Thirty-fourth. That the said John K. Rankin, U. S. special allotting agent did reserve for the Sloan family, pending the result of these suits, the following land to-wit: The N. E. ¼ of section 20, township 24, range 8 east.

That the said John K. Rankin, U. S. special agent, did reserve for the Frost family the following lands, to-wit: The S. E. ¼ of section 8; the N. E. ¼ of the N. E. ¼ and the S. ½ of the N. E. ¼ of section 8, township 25, range 7; and the N. W. ¼ of section 9; and the N. ½

of the N. E. ¼ of section 9; and the S. W. ¼ of the N. E. ¼ of section 9; township 25, range 7, east; and the N. W. ¼ of the N. W. ¼ of section 10, township 25, range 7 east, and which said reservations were reported by him to the Commissioner of Indian Affairs and the land so reserved have been designated upon the maps in the office of the Commissioner of Indian Affairs, pending the result of these
112 litigations, and out of which, allotments may be made to different members of the Sloan and Frost families, should it be determined that they or any of them be entitled to allotments on the Omaha Indian reservation.

Signed subject to correction of any clerical errors.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.
BROME & BURNETT,
ANDERSON & KEEFE,
Att'y- for Complainants.

Endorsed: Filed Aug. 21, 1902, Geo. H. Thummel, clerk.

113 Thereupon afterwards, to wit: on the 21st day of August 1902, stipulation of evidence was filed in said case, which said stipulation is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, THOMAS L. SLOAN, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. MATHEWSON, Megratahe Grant, JOHN GRANT, and CHARLES GRANT, Defendants.

Doc. "T." No. 174. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the complainant, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts, had been formerly taken.

Thomas L. Sloan will testify that his grandmother, Margaret Sloan, had her home on the N. E. ¼ of section 20, township 24, range 8, being a part of the lands claimed in the petition herein.

He will further testify touching the lands claimed in section 35, township 25, north range 7, which have been allotted to Poncasa Grant and Megratahe Grant, that he, the said Thomas L. Sloan, had said land broken up for Margaret Sloan at the time when the Grants first made claim to it, and that at set time he would testify that he

had caused improvements to be put on said property, consisting of a dwelling, barn, corncribs, grainary, well and some pasturage.
114 That when he first claimed the land, there was no mark upon it other than survey stakes. That the improvements made cost over $1,700.

William Springer will testify that there *is* on the lands allotted to Megratahe Grant and Poncasa Grant, a house, small corncribs, cattle sheds and fences which had been put there by Thomas L. Sloan.

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Doc. "T," No. 174. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the defendant-, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that such statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts, had been formerly taken.

Megratahe Grant will testify that she is the mother of Charles Grant and John Grant and Poncasa Grant, and one of the defendants in the above entitled case.

She will further testify that her husband in his life time (but who is now dead) made claim to the lands allotted to the Grants in section- 34 and 35, township 25, range 7, including the lands
115 allotted to Megratahe Grant and Poncasa Grant, described in the pleadings of this case and that said claim was made by her husband for the wife and children about 8 years ago, which would be in the year 1893 and that he at that time plowed around the land, but made no other improvements upon the property.

She will further testify that her husband said to her and the family at that time, that there was no breaking up or improvements on the land by any other person.

John Grant will testify that he is a son of Megratahe Grant and to whom an allotment has been made in said section 35, township 25, range 7, and that his father made claim to the lands allotted to the Grants in section- 34 and 35, township 25, range 7, eight years ago (which would be in the year 1893), that his father at that time plowed around the lands and said to the family that there were no

other breakings or improvements on the property at the time when he so plowed around it.

Antoine Cabney will testify that he was present at the Omaha Indian agency when the payment of annuity money was made in the year 1859. At that date the practice was for the person making the payment, to call out the name of the person entitled to receive the payment, and when such person came forward the money was handed to the person entitled to receive it, or to the head of families for families. That at the time stated Margaret Sloan's name was called out, he saw her go forward as if to receive the money.

That Antoine Cabney will further testify that in the year 1862, when like payment of annuity money was made that William E. Sloan (the father of Thos. L. Sloan) and Michael Barada
116 were called out and he saw them step forward as if to receive annuity money, but that he did not see them get the money.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainant.

Endorsed: Filed Aug. 21, 1902, Geo. H. Thummel, clerk.

117 Thereupon afterwards, to-wit: on the 3rd day of September, 1902, stipulation was filed in said case, which said stipulation is in words and figures following, to-wit:

In the Circuit Court of the Unised States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST and Thomas L. Sloan, Complainants, *vs.* THE UNITED STATES OF AMERICA, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.	Docket "T," No. 174. Stipulation of Facts.

It is hereby stipulated between the parties that Anna Cabana will testify in behalf of the complainants in the above entitled case, as follows: But to which testimony the defendants object as irrelevant and immaterial to the issues in this case.

I am 60 years of age, and the wife of Antoine Cabana who is one-fourth Omaha Indian blood, and a member of the Omaha tribe of Indians; that he has an allotment of 160 acres of land and draws annuity regularly at each payment. That I am a full white blood, and free born; that I have an allotment of 80 acres of land made to me under the provisions of the amendatory act of March 3rd,

1893; that I have drawn annuity money as a member of the Omaha tribe regularly at each payment since 1884.

That Antoine Cabana and I have had four children, Thomas, Mary, Francis, and Reuben.

That Thomas Cabana is married to a white woman, and lives in the State of California; that his wife, himself and children
118 receive annuity money regularly at each payment, and that the two children being 1-16 Omaha Indian blood have received allotments of land of 80 acres each under the act of Congress of March 3rd, 1893.

That Mary Cabana was married to William Lewis, a full blood white man, free born, to whom were born three children—Robert, Frederick and Antoine Lewis; that they are all 1-16 Omaha Indian blood, and are members of that tribe, receiving annuity money regularly at each payment; and each of the three named children have allotments of land of 80 acres each.

That my husband is a nephew of Margaret Sloan and Antoine Barada; and that John Pilcher, who was a cousin of my husband, was the son of a sister of Antoine Barada and Margaret Sloan. That my husband is the son of Mary Jane Paul, who is a sister of Margaret Sloan and Antoine Barada.

That I have known Margaret Sloan and Antoine Barada intimately, living in the same neighborhood since 1859, and have known them since 1855.

That in 1859 all of the persons named, and in addition thereto, the sisters of Antoine Cabana, they being Madeline Scott, Theresa Fuller, Eliza Wheeler, Elizabeth Baylis and Louisa Atkins, lived upon the Nemaha reservation, where they all continued to reside until 1872, when Mary Jane Paul, Louisa Atkins and Elizabeth Baylis removed to the present Omaha reservation. That Eliza Wheeler removed to the present Omaha reservation in 1874; that Julia Provo removed to the present Omaha reservation in 1875; that Madeline Scott removed to the Omaha reservation in 1878; that Louis Neal and Susan Neal removed to the Omaha reservation in the same year, 1878; that Theresa Fuller continued to reside on the Nemaha half breed tract until 1891, in which year she removed to the Osage nation in Oklahoma.

119 That all of the persons named had allotments of land consisting of 320 acres upon the Nemaha half breed reservation, and have since received allotments of land upon the present Omaha reservation under the provisions of the act of Congress of August 7, 1882.

That John Pilcher, who received an allotment on the Nemaha reservation, came to the Omaha reservation in 1876, that he married a white woman to whom an allotment of land has been made, amounting to 80 acres under the provisions of the act of Congress of March 3rd, 1893.

That to John Pilcher and his wife were born the following named children, Josephine, Charles, Minnie, Grace, Etta, Jennie, Millie and

William; that each of them named have received allotments of land upon the present Omaha reservation.

That Josephine married, first, a free-born full blooded white man by the name of Filson, to whom were born two chil lren, Birdie and Florence Filson, each of whom have received an allotment of 80 acres of land on the present Omaha reservation. That she next married George Lamson, who is a full blooded free-born white man, whose children, named Amos Lamson, Grace Ann Lamson and Zoe Lamson, have each received allotments of 80 acres upon the present Omaha Indian reservation.

That Etta Pilcher was married to a free-born full blooded white man by the name of Brownrigg, to whom were born four children, all of whom were borne upon the tribal annuity rolls and receive payment of annuity money; and to one Arthur Brownrigg there has been made an allotment of land consisting of 80 acres.

That Jennie Pilcher married a white man by the name of O. B. Phillips, to whom four children were born, all of whom re-
120 ceive payments of annuity money, and the oldest two of said children have received allotments of land of 80 acres each under the provisions of the act of Congress of March 3rd, 1893.

That I became acquainted with Mrs. Emily Campbell, a half breed Omaha Indian woman on the Nemaha half breed reservation in 1859; that we lived continuously in the same neighborhood for more than twenty years, and that in the year 1885 Emily Campbell and her family removed to the present Omaha reservation, where they had received allotments of land.

That the oldest daughter of Emily Campbell, Florence, is married to a free-born full blooded white man, to whom there have been born six children, all of whom are enrolled as members of the Omaha tribe of Indians, and each of whom receive payments of annuities out of each regular payment made to the Omaha tribe of Indians. That the three oldest children of Florence, Hanicka and Adolph Hanicka have received allotments of 80 acres each under the provisions of the act of 1893.

That the following list shows the allotments to Mary Jane Paul, her children, grand-children and great grand-children. That the list includes Anna Cabana, a full blood white woman, wife of Antoine Cabana. That the great grand-children, Gertrude Murphy and Alice Murphy, are 1-16 Omaha Indian blood. The allotments are under the act of August 7, 1882, and the amendatory act of March 3rd, 1893. That the great grand-children Marie and Henry Cabana, Robert, Frederick and Antoine Lewis are 15-16
121 white and 1-16 Omaha Indian blood.

			Sec.	T.	R.
497		Mary Jane Paul, W. ½ of the S. E. ¼	8	25	8
		N. ½ of N. E. ¼	17	25	8
559		Antoine Cabana S. W. ¼	24	24	7
	464	Anna Cabana E. ½ of S. W. ¼	4	24	8
558		Thomas Cabana S. ½ of N. W. ¼	25	24	7
	462	Marie Cabana lot- 3 & 4	5	24	8
	463	Henry Cabana lot 2 & S. W. of N. E. ¼	5	24	8
557		Mary Cabana N. ½ of N. W. ¼ of	25	24	7
	489	Robert Lewis S. ½ of N. E. ¼	32	25	8
	490	Frederick Lewis N. ½ of N. E. ¼	32	25	8
	491	Antoine Lewis E. ½ of N. E. ¼	36	25	8
556		Francis Cabana S. ½ of N. E. ¼	25	24	8
568		Reuben Cabana S. E. ¼ of N. E. ¼	26	24	7
	314	" " N. W. ¼ of N. W. ¼	22	25	7
390		Theresa Fuller, N. W. ¼	14	24	8
373		Elsie M. Fuller N. W. ¼ of S. W. ¼	11	24	8
372		Susan E. " S. E. ¼ of N. W. ¼	11	24	8
374		Louis " N. W. ¼ of S. W. ¼	11	24	8
331		Anna L. Fuller S. W. ¼ of N. W. ¼	11	24	8
369		George T. Fuller N. W. ¼ of N. W. ¼	11	24	8
370		Chas. E. " N. W. ¼ of N. W. ¼	11	24	8
375		Isabel " S. ½ of S. W. ¼	11	24	8
743		Madeline Scott N. E. ¼	2	25	8
841		George T. Scott, lots 5 & 6	12	25	7
844		Wesley " N. E. ¼ of S. E. ¼	12	25	7
744		Elizabeth Moncravie N. W. ¼	2	25	8
753		John B. " N. ½ of S. E. ¼	11	25	8
953		Chas. A. " S. E. ¼ of S. W. ¼	36	26	8
952		Henry C. " S. W. ¼ of S. W. ¼	36	26	8
951		Fred E. " N. W. ¼ of S. W. ¼	36	26	8
122					
745		Harrison Baylis, N. W. ¼ of S. W. ¼	2	25	8
416		Amy Murphy, N. W. ¼	22	24	8
413		Gertrude Murphy, N. W. ¼ of N. E. ¼	22	24	8
414		Alice Murphy, S. W. ¼ of N. E. ¼	22	24	8
746		Eliza Wheeler, N. ½ of S. E. ¼	2	25	8
		" " N. E. ¼ of N. W. ¼	2	25	8
887		Paul Wheeler, N. E. ¼ of S. E. ¼	15	25	6
879		Elmer Wheeler, N. W. ¼ of S. W. ¼	14	25	6
880		Lavaria Wheeler, S. W. ¼ of S. W. ¼	14	25	6
889		Anna Wheeler, S. E. ¼ of S. E. ¼	15	25	6
747		Louisa Atkins, E. ½ of N. E. ¼	3	25	8
752		James B. Atkins, S. E. ¼ of S. W. ¼	11	25	8

The numbers in the first column are those of the allotment made under the provisions of the act of Congress of Aug. 7, 1882, and those in the second column are the allotment numbers under the

provisions of the act of Congress of March 3rd, 1898. There are thirty-nine allottees in the foregoing list.

The following list is the allotment made to Julia Provo her children and grand-children. Julia Provo received an allotment on the Nemaha reservation as Julia Barada. Her name does not appear on the schedule approved January 26, 1871, by the Secretary of the Interior. All of the allotments but two are under the provisions of the act of Congress of March 3rd, 1893. The numbers in the first column are the allotment numbers under the act of August 7, 1882, and the numbers in the second column are the allotment numbers of the allotment under the amendatory act of March 123 3rd, 1893. Julia Barada Provo is a niece of Margaret Sloan.

			Sec.	Twp.	R.
809		Julia Provo N. ½ of N. E. ¼	27	25	8
	786	Wm. B. Provo E. ½ of S. E. ¼	3	24	8
	787	Mary L. Provo S. ½ of N. E. ¼	25	25	7
	788	Margaret " N. ½ of N. E. ¼	25	25	7
	789	Howard W. Provo S. ½ of S. E. ¼	27	25	8
	790	Arthur A. " E. ½ of N. E. ¼	27	25	8
	791	Gertrude " W. ½ of N. W. ¼	27	25	8
	792	Joseph G. " N. E. ¼ of N. W. ¼	27	25	8
		" " " N. W. ¼ of S. E. ¼	27	25	8
451		Josephine Barnaby W. ½ of N. W. ¼	26	24	8
	419	Guy Von Felden, W. ½ of S. W. ¼	33	25	8

The following is a list of the allotments to John Pilcher, his wife, his children and grand-children. John Pilcher is a nephew of Margaret Sloan and Antoine Barada. The first column are the allotment numbers under the act of August 7, 1882, and the second column are the allotment numbers under the amendatory act of March 3, 1893.

			Sec.	Twp.	R.
781		John Pilcher, S. E. ¼	16	25	8
	420	Harriet Pilcher, W. ½ of N. W. ¼	25	25	7
458		Josephine Filson, N. E. ¼ of	27	24	8
462		Birdie J. Filson N. E. ¼ of S. E. ¼	27	24	8
	343	" " " S. E. ¼ of S. E. ¼	27	24	8
	344	Florence Filson E. ½ of the S. E. ¼	24	25	6
	345	Amos Lamson S. ½ of N. E. ¼	22	25	8
	346	Grace Ann Lamson W. ½ of S. E. ¼	14	25	8
	347	Zoe Lamson E. ½ of N. W. ¼	22	25	8
496		Charles Pilcher E. ½ of N. W. ¼	9	24	7
	321	Edward " S. W. ¼ of S. W. ¼	9	25	8
		" " S. W. ¼ of S. E. ¼	9	25	8
124					
483		Minnie Pilcher, S. ½ of S. W. ¼	4	24	7
	81	Frank Hamilton, N. ½ of S. W. ¼	9	25	7

	82	Walter Hamilton N. ½ of S. W. ¼	9	25	7
	83	Walter Hamilton S. ½ of N. W. ¼	17	25	7
492		Elsie Grace Pilcher S. E. ¼ of S. E. ¼	5	24	7
	334	" " P. Springer N. E. ¼ of N. E. ¼	21	25	7
	365	Mabel Springer N. ½ of N. W. ¼	33	25	7
	366	Evalene Springer S. ½ of N. W. ¼	33	25	7
817		Wm. H. Pilcher N. W. ¼ of S. W. ¼	32	25	8
	422	Wm. H. Pilcher, S. W. ¼ of N. W. ¼	24	25	7
818		Millie " S W. ¼ of S. E. ¼	32	25	8
	421	Millie Pilcher N. W. ¼ of N. E. ¼	23	25	7
819		Etta Pilcher S. E. ¼ of S. E. ¼	32	25	8
	506	Etta P. Brownrigg S. W. ¼ of N. E. ¼	23	25	7
	698	Arthur Brownrigg E. ½ of N. E. ¼	23	25	7
816		Mary V. Pilcher N. E. ¼ of S. E. ¼	32	25	8
	663	Mary V. Pilcher, S. E. ¼ of N. W. ¼	24	25	7
	664	Etta Phillips, N. ½ of the S. W. ¼	24	25	7

JNO. L. WEBSTER,
Att'y for Def'ts.
THOMAS L. SLOAN,
CHARLES E. CLAPP,
Att'ys for Complainants.

125 In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Magratahe Grant, John Grant, and Charles Grant, Defendants.

Doc. "T," No. 174. Stipulation of Facts.

It is hereby stipulated that witnesses produced by the complainant- testified to the correctness of the following statements, and it is further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the said witnesses to the said facts had been formerly taken.

The following is a partial list of those mixed bloods who received allotments on the Nemaha reservation under the provisions of article 10 of the treaty of July 15, 1830, and who have since received allotments under later acts. The first column shows the allotment under the treaty of 1830 and the second column to the same person under later laws. The names are different in some instances owing to mistakes in the names, and because of the marriage of the parties in other instances.

Treaty of 1830.	Act of 1882.
Henry Fontenelle.	Henry Fontenelle.
L. Albert Fontenelle,	Lucien Albert Fontenelle.
Susan Neals,	Susan Neals
Louis Saunsoci,	Louis Saunsoci.
Susette La Flesche,	Susette Tibbles.
Emily Barnaby,	Emily Campbell.
126 Julia Barada, daughter of Antoine Barada,	Julia Provo
Mary Jane, Paul, sister of Margaret Sloan,	Mary Jane Paul
Madeline Paul, niece of Margaret Sloan,	Madeline Scott
Eliza Paul, " " "	Eliza Wheeler
Elizabeth Paul, " " "	Elizabeth Baylis
Louisa Paul " " "	Louisa Atkins,
Prisa Paul " " "	Theresa Fuller
Antoine Paul, nephew " "	Antoine Cabana
John Pilcher, " " "	John Pilcher.
Treaty of 1830.	Act Mar. 3, 1893.
Mary La Flesche,	Mary La Flesche,
Louis Neal,	Louis Neal.

Clara Barada, daughter of Antoine Barada, was allotted on the Nemaha reservation. She has been since allotted as Clara Dupuis and all her children. That the allotments to them are on the Iowa reservation.

John Dupuis and Francis Dupuis who were allotted on the Nemaha reservation have since been allotted on the Iowa reservation.

Daniel Godfrey who was allotted land on the Nemaha reservation has since been allotted land on the Iowa reservation.

Emily Fontenelle who was allotted land on the Nemaha reservation has been allotted other lands on the Pawnee reservation.

Antoine Robidoux who was allotted lands on the Nemaha reservation has since been allotted lands on the Otoe reservation in the Indian Territory.

That Leon Connoyer who was allotted land on the Nemaha reservation has since been allotted lands on the Rosebud Sioux reservation in South Dakota.

127 That Henry Didier who was allotted land on the Nemaha reservation has since with his children been allotted land on the Rosebud Sioux reservation. His wife is a white woman.

That John Cordier and Charles Cordier who received allotments on the Nemaha reservation have since received allotments on the Rosebud Sioux reservation.

JNO. L. WEBSTER,
Att'y for Def'ts.
THOMAS L. SLOAN,
Att'y for Complainants.

128 In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Docket "T." No. 174.
Stipulation of Facts.

It is hereby stipulated that the complainant- produced witnesses who testified to the correctness of the following statements and it is further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the said witnesses to the said facts had been formerly taken.

That said witnesses to whom *were* submitted the certificate on file from the Commissioner of Indian Affairs under date of October 22, 1901, stated that Mary Fontenelle, Susan Fontenelle and Josephine Fontenelle, whose names appear in a schedule in said certificate under numbers 28, 29 and 31, as having been paid money November 7, 1866, by E. B. Taylor, have each severally received allotments of lands on the Omaha Indian reservation under the provision of the act of March 3, 1893.

JNO. L. WEBSTER,
Att'y for Def'ts.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Sep. 3, 1902, Geo. H. Thummel, clerk.

129 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, depositions for complainants were filed in said case, which said depositions are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Docket "T." No. 174. Depositions for Complainants.

Index to Witnesses.

Name of witness.	Direct.	Cross.
Stephen J. Snyder	1	2
Anna Cabana	9	9
Mrs. Artemesia Frost	12	23
Antoine Cabana	42	48
William F. Springer	69	77
Charles P. Mathewson	86	88
Emily Campbell	91	—

130 In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Docket "T," No. 174. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at Pender, in the State of Nebraska, on this the 22nd day of August, 1902, the complainants being represented by Thomas L. Sloan, Esq., and the defendants being represented by John L. Webster, Esq.

STEPHEN J. SNYDER, a witness produced in behalf of the complainants, being first duly sworn, deposes and says as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. State your name?
A. Stephen J. Snyder.

Q. You may state whether or not you know the lands described as the southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter of section 35, township 25, range 7, east? Do you know those lands?

A. Yes, sir.

Q. Were you ever employed to do any work upon it?

A. I was.

Q. What year were you so employed?

A. It was in 1893.

131 Q. What was the character of the work you did there?

A. I broke the farm out and put it in a crop.

Q. Was there any breaking, or any marks upon that land at the time you went there?

A. No sir, there were none.

Q. Explain the character of the land at the time you went there?

A. It was a raw piece of land, unbroken.

Q. Was there any plowing on it or around it?

A. There was none.

Q. What was the character of the improvements put upon the place by you under my direction?

A. First we put up a house, and a barn, and a well, and put up sheds.

Q. How much of the land did you break on that particular 80 acres?

A. All but about four or five acres of the 80 acres.

Q. What was the reasonable value of the improvements on that place when you left there including the breaking?

A. About $900.00 or better. Well, I will say a thousand dollars.

Cross-examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Were you hired by Thomas L. Sloan to break this land?

A. Yes sir.

Q. Did you have a written contract with him?

A. No sir.

Q. Did he pay you for the work, or did you give him a share of the crops for the use of the land?

A. He paid me for it.

Q. In money?

132 A. Yes, sir.

Q. How much?

A. $180.00.

Q. Now, for that $180.00 what did you do?

A. I done general farm work.

Q. Did you raise any crops?

A. Yes, sir.

Q. What did you do with the crops?

A. I sold the flax, and the corn I fed to the cows and horses.
Q. Did you deliver any of it to Tom Sloan?
A. No, sir.
Q. You yourself consumed all that you raised?
A. Yes, sir, and for the flax I turned the money over to Mr. Sloan, and the other, it was fed to his stock.
Mr. SLOAN: Whose stock?
A. Your stock.
Q. Thomas L. Sloan's stock?
A. Yes, sir.
Q. Where was his stock, on this land?
A. Yes sir.
Q. You went on this land in 1893. You did not live on the land in 1893, did you?
A. Yes sir.
Q. There were no houses there then?
A. I built one in the spring of 1893.
Q. Then you lived in the house that you built there?
A. Yes sir.
133 Q. Then how many years did you continue on this land?
A. I was only there until fall, and then I was away about a year I think, and then I went back again, and I run the place another year.
Q. Under your contract with Thomas L. Sloan, as before?
A. Yes sir.
Q. The year you was away, was your brother on the land?
A. Yes sir.
Q. Then between yourself and your brother you were on the land from 1893 up to about what time, 1897?
A. I have forgotten the date. I forget the date that he left. I think it is about four years that we were there. I could not say positive now.

Re-direct examination.

Questions by Mr. T. L. SLOAN:

Q. Do you know who succeeded your brother?
A. Yes sir.
Q. Who was it?
A. Hans Vogt.

Re-cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. From 1893 to 1897 either you or your brother were occupying this 80 acres of ground and cultivating it under a contract with Thomas L. Sloan?

A. A verbal contract I believe. I know that is what I had. I could not say as to my brother, but I think it was verbal.

Q. Whenever you sold any of the crops during any of those years you accounted to Thomas L. Sloan for the proceeds of the sale?

134 A. Yes sir.

Q. No other person lived on this land except you and your brother during those four years?

A. Why, I had another brother that was working there too at the same time; he was there.

Q. No other person lived there except you and your two brothers?

A. Nothing, only of course, we had some extra help some of the time.

Q. White men?

A. Yes sir.

Q. Do you know whether Hans Vogt lived there after he went into possession after 1897? did he live on that land?

A. I believe he was, yes sir.

Q. In the house that you built?

A. Yes sir.

Q. There was only one house on the land?

A. Yes sir.

Q. When you fix the value of the improvements at the time you lived there, you refer to the year 1897, I believe?

A. Yes sir.

Q. And whatever outbuildings there were?

A. Yes sir, all of those.

Q. And the fencing, if any?

A. Yes sir.

Q. And the breaking of the land?

A. Yes sir.

Q. In order to get your idea then of this, how much did you consider the breaking of the land worth?

A. $120.00.

135 Q. And how much the fencing?

A. About $25.00. There wasn't a great deal of fencing on there, only a little pasture, and in the yards.

Q. And how much the dwelling house?

A. About $600.

Q. How much the outbuildings?

A. That is all of them complete?

Q. Yes, sir, the outbuildings?

A. The sheds and the barn, and the corn crib and the grainary, why, about $200. That did not include the well and the tank and anything like that.

Q. Then you might state separately what that well was worth?

A. There was a well, and the tank and the cave there, I should judge was about $50.00.

Q. Was this a log house or a frame house?

A. A frame house.
Q. Plastered or not?
A. Yes, plastered.
Q. And painted?
A. Yes, on the inside and on the outside. It was painted outside too. I helped paint it.
Q. Are you a carpenter?
A. Yes, sir.
Q. A carpenter and farmer both?
A. Jack of all trades.

Q. You may state the size of the house as you best recollect it?
136 A. The part we put up first was 12 by 16 and then an addition about 16 by 24. It was 9 foot posts I believe; yes, nine foot posts. Then there was an addition put on that year 10 by 20. That was after I left there. I could not say exactly. I was there once or twice; I could not say exactly.
Q. There was no room between the two buildings?
A. Yes, a hall, and a kind of a store room.
Q. And then the stable?
A. Yes sir; the stable was 45 feet long and 14 or 16 feet wide.

(Counsel for complainants hands witness a photograph.)

Q. In the photographic view filed in docket T. number 174 as an exhibit, there are apparently two pictures, each representing the same buildings, the two pictures being taken from a different point of view of the same buildings, is not that correct?
A. Yes sir.
Q. And those buildings are the ones which you have described in your testimony?
A. Yes sir, but not all of them. There were more buildings involved there than that.
Q. The buildings which you refer to, and which do not appear on that photograph were what?
A. Were the grainary, and the cattle shed about 100 feet long.
Q. Do you know whether the grainary and cattle shed are on the ground now or not?
A. I could not say as to that. I have not been there for a year or two.

Witness excused.

It is agreed between the parties that the signature of the witness to the above deposition is hereby waived.

137 ANNA CABANA a witness produced in behalf of the complainants, being first duly sworn, deposes and says as follows:

Direct examination by Mr. T. L. SLOAN:

Q. State your name?
A. Anna Cabana.
Q. Was you with Mrs. Sloan—Mrs. Margaret Sloan when she died?
A. Yes sir.
Q. At whose house did she die?
A. My house.
Q. Was that on the reservation?
A. Yes sir.
Q. On whose allotment?
A. It was on our allotment, on Mr. Cabana's allotment.
Q. Where had she been living previous to that?
A. On her claim.
Q. How far from town?
A. Three miles.
Q. On the Omaha reservation?
A. Yes sir.
Q. How long had she been living there?
A. She had been living there since 1881.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. When you speak of Mrs. Sloan's place of living, do you mean on the northeast quarter of section 20, township 24, range 8?
138 A. I do not know the numbers of the land, or the section, or anything like that, but she was on the claim that she claimed. She had her house and building there.

It is agreed between Thomas L. Sloan and John L. Webster that the land referred to by the witness, Mrs. Cabana as being the home of Margaret Sloan, was the northeast quarter of section 20, township 24, range 8 east, being the land reserved for Margaret Sloan.

Q. Margaret Sloan did not live on this land in the winter, did she?
A. Some of the time; some winters she stayed all winter out there, and others she did not; she would be gone over two or three months, gone away.
Q. Where would she be?
A. Sometimes she would be at my house, and sometimes at Mrs. Frost's, and Mrs. Pilcher's. She would go and spend the few coldest months with them.

Q. She at that time was a very old lady?
A. Yes, sir.
Q. And she was too old to do any farm work herself?
A. She did not farm; she always had someone living on the place to do it for her. She made a garden and attended her garden herself.
Q. Who did she have living on the place to do the work for her?
A. She had one time. Mr. Martin has been there for years on the place. He is on there yet I guess.

139 In explanation of the place where Margaret Sloan lived, Thomas L. Sloan states that the two photographs on Exhibit Docket T, Number 176, both represent one and the same set of buildings, and that the smaller end of the dwelling house is the dwelling house in which Margaret Sloan lived, and which Thomas L. Sloan occupied during the time that he lived with Margaret L. Sloan, and that the larger part of the dwelling house has been constructed some ten years ago, and was occupied by a tenant or employés.
Witness excused.
By the consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

140 Mrs. ARTEMESIA FROST a witness produced in behalf of the complainants, being first duly sworn, deposes and says, as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Did you know Margaret Sloan?
A. Yes sir.
Q. What relation were you to Margaret Sloan?
A. She was my mother.
Q. Did you know Mary Jane Paul?
A. Yes sir.
Q. What relation did she sustain to you?
A. She was my aunt, my mother's sister.
Q. And Antoine Barada?
A. He is my uncle, my mother's brother.
Q. And do you know John Pilcher?
A. I did.
Q. What relation were you to him?
A. He was a first cousin to me, my aunt's son, my mother's sister's son.
Q. When did you first come among the Omaha Indians?
A. In the year 1854.
Q. Who was with you at the time?
A. My mother and my oldest brother William, and my brother John, and my cousin Antoine Cabana.
Q. Where were the Indians at that time?

A. They were located around Bellevue, Sarpy county Nebraska, south of Omaha.

141 Q. Who did you meet there at that time?

A. I met my Indian relatives, Uncle Noise, Mazhakega.

Q. Who else?

A. There was Uncle Manchuka.

Q. Did you meet your mother's sister at that time?

A. Yes sir.

Q. Who was she?

A. Mary Jane Paul, I met her.

Q. Where was she living at that time?

A. She was living right above Bellevue under the bluffs near the Missouri river.

Q. How long did you remain there?

A. Well, sir, I could not possibly tell you, because I was young and I do not exactly remember; we were there quite a while.

Q. Do you remember the occasion of your living?

A. Yes sir.

Q. State what it was?

A. The day I was three years old my mother's sister and her husband and little child had come to visit us and see us. That was on Sunday. And they started back to the village, back of Bellevue, and they were frightened by the Sioux, and my aunt Angeline was killed by the Sioux Indians, and her little baby also.

Q. How long did you remain there after that?

A. We went then, a day or two after that; we were frightened by the Indians—by the Sioux.

Q. When did you next come back to the Indian country?

142 A. It was but a short time. I do not remember exactly the date, but we were not gone very long until we came back to Bellevue.

Q. What was Margaret Sloan doing there at that time?

A. She was keeping a boarding house in Bellevue?

Q. From Bellevue where did you go to?

A. We then came up to the Blackbird Hills country, known as the Blackbird hills, came up here with the Indians that were moved up here.

Q. Do you know for what purpose?

A. To locate our homes; the Fontenelles, and Pauls, and all the rest of the Indians came up here at that time.

Q. How long did you stay here then?

A. I could not tell you exactly how long we stayed. The Omaha mission was being built. I remember when its walls were no higher than that (indicating) and we stayed until it was built, and my brother John went to school at the Omaha mission. I was too little to attend the mission school, but my brother John attended the mission school there at the same time that William Tyndall and those older members of the tribe attended school there.

Q. What was your father doing there at that time?

A. He was running a Government mill for the Indians, sawing up lumber. He was engineer.

Q. Had you taken land on the Nemaha reservation at that time?

A. I could not tell you as to that. I do not remember. I was too young to know anything about it.

Q. You did receive an allotment for yourself on the Nemaha reservation?

143 A. Yes, sir.

Q. How much?

A. 320 acres.

Q. When did you move to the Omaha reservation with your family first?

A. In 1875.

Q. Did you draw any annuity money at that time?

A. I did.

Q. How much did you get?

A. My close relative that was doing—acting for me, his name was Eberhambe, he drew my annuity money and gave it to me, $20.00. He gave me $20.00, but it was $19.00 the annuity was and it was part for myself and part for my oldest child, Philemon H. Frost. Ed. Paul could not make the change and so he gave me the $20.

Q. Was that about the time of September 15, 1875?

A. Yes, sir; it was.

Q. And it was paid to you in the name of Artemesia Frost?

A. Yes, sir.

Q. And who else in the family?

A. To myself and my oldest child, $19.00.

Q. Did you select any land upon the Omaha reservation at that time?

A. Yes, sir.

Q. What did you do towards claiming it?

A. I had breaking done, and the house logs cut, and was preparing to make a home on it.

Q. Did you make your home upon it?

144 A. No sir, sickness and death overtook us, and we failed to stay on the place.

Q. What became of the building and land?

A. It was taken by other members of the Omaha tribe.

Q. Do you know to whom that particular tract of land was allotted?

A. It was occupied by Merritt Wheeler; whether it was allotted to his wife or his children, I do not know. I never seen the allotment papers, but it was allotted to some of the Wheeler family, Mrs. Eliza Wheeler being my cousin.

Q. Where did you go to from the reservation at that time when you left it?

A. I went to the half breed tribe—the Nemaha reservation.

Q. Where are you living now?

A. I am living out here on my claim on the Omaha reservation.

Q. During the time you were on the reservation in 1875 what other recognition as an Omaha Indian did you have beside that of annuity payments?

A. I was received by the chiefs in council before the United States Indian agent and acknowledged as a full member of the Omaha tribe of Indians, to have all rights and privileges of any other Omaha Indian. I had the use of the Government cattle; I had the use of the pasture, and had the privilege of going to the timber and getting my fire wood, and had the same privilege of the mills, and all other privileges that any other Omaha Indian had, and was considered one, and was up to the time that Miss Alice Fletcher rejected me. She was the United States Indian allotting agent.

145 Q. You may look at that photograph and state whether it is a picture of the premises you occupy?

(Handing witness photograph.)

A. Yes sir, that is the place; that is where I live.

(Photograph referred to is the one filed in docket "T" number 462 of this court.)

Q. Who made the improvements?

A. I made the improvements, or caused them to be made, and paid for them. The place was nothing but prairie grass when I settled on it.

Q. And has it been broken up since?

A. Yes sir.

Q. Who did the breaking?

A. I hired some of it done, and some of it my husband done.

Q. Who is farming it now?

A. My son. My two sons. My oldest son and my youngest son are doing the farming on it.

Q. And who are living there?

A. My oldest son, and my son Leonard, a cripple, and my youngest son and myself.

Q. For whom did you claim the farm?

A. For myself and my daughter Mary.

Q. There are no adverse claimants to your right?

A. I think not, at least the allotting agent respected my rights.

Q. By whom were you directed to take possession of the premises?

A. By Captain Beck.

Q. What position did he occupy?

146 A. United States Indian agent.

Q. For what tribes?

A. For the Omaha and Winnebago tribe of Indians.

Q. Has he been occupying it since?

A. Excepting the time that I was forcibly removed, and then I went right back.

Q. How long were you absent?
A. About four days.
Q. You were then forcibly taken away without your consent?
A. I was, yes sir, hauled off like a criminal.
Q. By whom?
A. By the Omaha police under the order of Captain Beck.
Q. Indian police, were they?
A. Indian police, yes, sir.
Q. When did Margaret Sloan remove to the reservation, if you know?
A. Removed to the reservation? She came in 1881 I think; it was either in the spring of 1881 or the fall of 1881.
Q. Where did she continue to reside from that time on?
A. On her claim that she selected for her claim, on the Logan about three miles southeast of Bancroft.
Q. Southeast of Bancroft?
A. Northeast.
Q. Was Margaret Sloan in any manner recognized as an Indian member of the tribe?
A. Yes, sir.
Q. State in what particular?
147 A. She has drawn annuity time and again as an Omaha Indian woman, a member of the tribe.
Q. Were you with her at any time when she drew annuity money?
A. I was when I was a little girl. When we lived at Bellevue she went over to, I think it was St. Mary's point, or St. Mary's, or Glenwood, and I do not remember which, where the agent was located—the Indian agent—and she drew her annuity there.
Q. What Indian agent was it, if you know?
A. Well sir, I think it was either Major Robinson, or Major Hepner, and I do not remember which.
Q. Who were the persons that constituted the Sloan family?
A. The Indian part of it?
Q. In 1856?
A. There was Margaret Sloan and William Sloan and John M. Sloan and Artemesia Sloan.
Q. Who were the members of the Sloan family in 1858?
A. There was Margaret Sloan, and William Sloan, and John M. Sloan and Artemesia Sloan.
Q. And in 1859 who constituted the Sloan family?
A. Well, the same people to my recollection.
Q. Was Thomas Sloan the husband of Margaret Sloan?
A. Yes sir.
Q. Was he a member of the family at that time?
A. In 1858?
Q. Yes, and in 1859?
A. I do not know whether he was at home or whether he was on

the river at that time. But he was a member of the family, of course.

148 Q. And those persons you named constituted the family from 1858 down to 1865?

A. Yes sir.

Q. Were there any other persons in the Omaha tribe that were known by the name of Sloan?

A. No sir, not to my knowledge.

Q. If there had been any such you would have known it, would you?

A. I most certainly would, because I had the rolls, the Omaha rolls. I seen them several times. I never knew of any other Sloan being on the Omaha reservation but this family of Sloans.

Q. Do you know of any other instance in which Margaret Sloan was recognized as a member of the Omaha tribe of Indians?

A. None, only by drawing her lands as an Omaha Indian.

Q. What land do you refer to?

A. The Nemaha half breed land; he was recognized as a member of the Omaha tribe at that time. The different tracts were stipulated at the head of the list that they drew.

Q. When did you first select the land that you now occupy?

A. When did I first select it?

Q. Yes?

A. In 1891.

Q. Did you make any other selection of lands at that time?

A. Why, yes, I made selections for my children.

Q. State the names of those for whom you selected?

A. Philemon H. Frost, Mary Frost and Charles Frost and Leonard Frost, and Frank Frost and Eliza also.

149 Q. Is that land which is now claimed by Philemon Frost the same land that you originally selected for him?

A. Yes sir.

Q. Did you break up any of the land claimed by your son Frank Frost?

A. Yes sir.

Q. What year did you break that land up?

A. I do not remember exactly. I think it was in 1893 or 1894—1895. It was in 1895 I think.

Q. How much did you break?

A. About twelve acres I guess. 12 or 13 acres.

Q. Had there been any breaking on it previous to the time that you broke it up?

A. Nothing visible, there was no breaking on there at all. I did the first breaking that was on the place. I think it was about; well I could not tell you exactly how many acres there was we broke on it, it was quite a piece I know anyway.

Q. Do you remember how the 80 acres run, north and south or east and west?

A. I guess it run east and west.

Q. Is there a contest over the land that you selected for your son Frank?

A. The allotting agent has allotted it——

Q. To some other person?

A. To some other person.

Q. Do you know who those persons are?

A. It is William Tyndal.

150 Q. Or some of William Tyndal'- family?

A. I do not know. I do not know whether it is himself or his children.

Q. Or some of his children?

A. Yes, sir; the allotting agent said that I could not hold it for Frank, because Guy Grace had put in there a statemnt t hat he broke around the land before I had done any breaking. That is what the allotting agent said. Of course I do not know. He rejected my claim anyhow.

Q. Have you sent your children to the Indian schools?

A. Yes sir.

Q. State which of your children have attended the Indian schools?

A. Why, the oldest is Philemon Frost and Charles Frost, and Sarah Frost and Leonard Frost has attended Government school, and the two youngest has attended the Congregational mission school at Santee, Nebraska. They attended there three years. In fact that has been the most of their schooling—has been Indian schools.

Q. What schools have they attended outside that at the Santee agency?

A. My oldest son attended school at Highland, Kansas, at the university; it was to have been an Indian school, and there was provisions made that Indians could go there. And my youngest son is now attending school——

Q. Did your oldest son attend at Haskell?

A. Yes sir, he was down there a while.

Q. And which of the other children were at Haskell?

151 A. Sarah Frost, Sarah Eliza McCreary now, and Charles Frost and Leonard Frost. They attended at Haskell, Kansas.

Q. What other school has Charles Frost attended?

A. Hampton, Virginia, the Government school.

Q. And what other one?

A. The Omaha agency school.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Your father's name was Thomas Sloan?

A. Yes sir.

Q. And your mother was Margaret Sloan?

A. Yes sir; Margaret Barada Sloan.

Q. Your father and mother were married in the city of St. Louis?

A. Yes sir.

Q. Your father was a white man?

A. Yes sir.

Q. And your mother was a half breed woman?

A. Yes sir.

Q. You yourself then claim to be one-fourth Indian blood, and three-fourths white?

A. Yes, I suppose that is the make-up.

Q. In other words you sort of reverse the order of things, and instead of the Indian treating it white blood, it is the white blood treating it Indian?

A. I consider I am an Indian, and they tried to civilize me, therefore I wear citizens' clothes.

Q. Do you know when you were born?

152 A. My parents told me I was born in 1851. I suppose Mr. Peters knows pretty near about that.

Q. You were living in St. Louis at the time of your birth; your family were living there at the time you were born?

A. Yes, sir. My father was an engineer by trade, and run on the rivers, that is the way he made his living.

Q. What year was it when you came to Bellevue with your mother?

A. It was in the spring of 1854 I am pretty positive.

Q. At that time you were about three years of age?

A. Three years of age.

Q. Did your father come with you?

A. No sir, he did not come with us.

Q. If you came to Bellevue in 1854, how long did you stay here, until 1855?

A. Well, I should judge about that time. I do not know exactly, as I tell you I was young, and I did not pay much attention to dates. We came up the first time and we went back, and then the second time we came up we stayed there. It was a very short period between the two times, and we stayed there from that time until the Indians were removed up here on this reservation, and we came up with them. They were removed up here I think about 1855 or 1856, was it not?

Mr. SLOAN: 1857.

A. My mother kept a boarding house in Bellevue a while.

Q. I want to get back at that first visit. It was during your first visit in 1854 and 1855 that you spoke of your mother, Margaret Sloan drawing annuity payments?

A. Yes, sir.

Q. And it was after that some time that you spoke of the Sioux invasion?

153 A. It was about that time.

Q. Well, was it while you were at Bellevue that one of the family——

A. That my aunt was killed, yes sir; it was while my mother and I were at Aunt Mary Paul's.

Q. That was in 1854 or 1855?

A. I think it was in 1854. I think so.

Q. And that is the time when you speak of having met your relatives that you named?

A. Yes sir, that was the time.

Q. Is it at the same time that you speak of having been received into the Indian council?

A. No sir, that was not the time.

Q. Now, then, you left Bellevue on that visit in the year 1855?

A. Well, as I told you, but I do not know whether it was in 1855 or 1854. It was in 1854 that we went down the first time. We came up and stayed a short time. Cabana, how long did we stay at your mother's?

Mr. CABANA: About four weeks.

A. We went back then, and we came up the next summer, or the same summer.

Mr. CABANA: I think you came up the next summer.

A. The next summer?

Mr. CABANA: Yes.

A. That would be in 1855.

Q. When you say you went back you mean you went back to St. Louis?

A. Yes, sir.

Q. When did you then come back to Bellevue; you think you came back to Bellevue the next summer?

154 A. Yes sir, we moved our things up on the steam boat; moved our household goods and household effects up.

Q. That then was in 1855 or 1856?

A. I think it was in 1855. I am pretty positive it was.

Q. Now how long did you stay at Bellevue at that time?

A. Well, I really could not tell you how long we did stay there. Do you know Cabana? As I tell you I was a child about three years old, and time I could not designate. That man (referring to Mr. Cabana) was a young man at the time, and I was a little girl, and he came up with us. He knows more about the time we were there than I do.

Q. I am trying to get at your personal recollection. After you came up the second time you remained a while, and then did you go back to St. Louis?

A. No sir.

Q. Then did you go from there to the Nemaha reservation?

A. Well, I do not recollect for sure whether we—I think we came up here first before we went down there on the Nemaha reservation.

Q. Were you up on the Omaha reservation with your father and mother the time that your father Thomas Sloan had charge of the mill on the Omaha reservation?

A. I was, yes sir.

Q. Your father you recollect was here in the Government employ to build and operate a mill?

A. Yes sir.

Q. And when he finished that employment he went to the Nemaha reservation, did he not?

155 A. Yes, we did.

Q. And your mother went to the Nemaha reservation?

A. Yes sir.

Q. And the children, John M. Sloan, and William A. Sloan and yourself?

A. Yes sir.

Q. Went with the family to the Nemaha reservation?

A. Yes sir.

Q. And that was in 1859, was it not?

A. Yes sir, I think so.

Q. And it was in 1858 and 1859 that your father had charge of the mill on the Omaha reservation?

A. Yes sir.

Q. After you went to the Nemaha reservation in 1859 you and your father and mother with the family continued to live there up until the time of your marriage?

A. Yes sir, with the exception of my mother's visits back here on the reservation to draw her annuities. She was back several times.

Q. You cannot tell, or can you tell what particular years Margaret Sloan drew annuity after 1859?

A. No sir, I could not mention the years. I know that she came up here. She came up here.

Q. There is a certified record on file which indicates that Margaret Sloan received an annuity October 26th, 1860 and December 2nd, 1862?

A. Does it state what agent? under Major Wilson?

A. No, it does not, but her name is on these rolls.

156 Q. Are those two years I have mentioned likely the time when she came up to the reservation to get annuity?

A. Yes sir.

Q. Your mother continued to live on the Nemaha reservation until 1881?

A. Yes sir.

Q. And your father lived with your mother on the Nemaha reservation up until what time?

A. Until 1875 I think, 1876.

Q. Do you know what time your father died?

A. I do not remember the date. I was at home, but I do not remember the date.

Q. He died about 1881, did he not?

A. In 1893.

Q. Your father did not come to the Omaha reservation in 1881 with your mother?

A. No sir.

Q. Had you personally received your allotment on the Nemaha reservation before your marriage?

A. Yes sir.

Q. And Leonard L. Frost was your husband?

A. Yes sir.

Q. And you married him in the year 1870?

A. 1869.

Q. And where were you married?

A. In Richardson county, Nebraska, at home, my mother's home.

Q. Was that on the reservation, or off the reservation?

157 A. It was on the half breed tract, the reservation, on her allotment of land.

Q. Your husband was not an Omaha Indian?

A. No, sir.

Q. After your marriage with Leonard L. Frost in the year 1870 you continued to live on the allotment which you received on the Nemaha reservation?

A. Yes sir.

Q. Did you go to the Omaha reservation in the year 1874 or 1875?

A. In the year 1875 I moved here.

Q. How long did you remain here at that time?

A. Something over a year.

Q. Then did you go back to the Nemaha reservation?

A. Yes sir.

Q. How long did you continue to live on the Nemaha reservation at that time?

A. I think about ten or twelve years, maybe it was longer.

Q. Did you at any time remove to Highland in the State of Kansas?

A. Yes, my husband moved there and I too.

Q. Do you remember about what year it was?

A. I do not; we went there for the purpose of putting our children in the school.

Q. The children you refer to would be Philemon and Sarah, and Charles and Leonard?

A. Yes sir.

Q. Did Mary and Frank also go to the Highland school?

A. Yes sir.

158 Q. While you were living at Highland, Kansas you were not living on an Indian reservation?

A. No sir, I did not consider it my home. I was cooking for my family while they went to school. I was only there about two years.

Q. When was it that you finally removed to the Omaha reservation as you think?

A. Well, I improved and settled on the place that I am claiming for my home in 1895, I built my house and settled there; that is, I continued to improve it.

Q. 1895?

A. Yes sir, I claimed it after that.

Q. Can you give the location of the land that you entered upon and improved in the year 1895?

A. I do not know the numbers of it.

Q. Is it the same land that you are living on now?

A. Yes sir; it is the same; it is in section 8 town—I could not give you the numbers at all, because I do not know enough about the numbers to give them to you.

Q. The place where you live then is likely on the northwest quarter of section 9, township 25, range 7, is it not?

A. I think that is it; I think so; I am not positive.

Q. You understand, do you not that that land is land which has been reserved for the Frost family and has not been allotted to anybody else?

A. That is what the allotting agent told me; yes sir.

Q. Now did you the same year—was it at a later date when you made claim for your daughter Mary and for your son Benjamin?

159 A. It was at the same date.

Q. 1895?

A. The allotting agent told me he would respect my claim.

Q. And then the land which you selected for Mary Frost, the south half of the northeast quarter of section 8, township 25 range 7 has also been reserved for the Frost family?

A. Yes, sir.

Q. And not allotted to anybody else?

A. No, sir.

Q. The north half of the southeast quarter of section 7, township 25, range 7, containing *either* acres has been allotted to someone else as you understand, that being the land which you think you selected for your son Benjamin?

A. Yes, sir.

Q. Now when Miss Fletcher came to the Omaha reservation as special United States allotting agent you made claim to her for allotments of lands?

A. Yes, sir.

Q. And did you talk with her about your claim?

A. Yes, sir.

Q. And stated the facts about it?

A. Yes, sir.

Q. Gave her all the information that you had to give?

A. Yes, sir, I did. I told her that I had been recognized in the Omaha tribe by the chiefs in council, that they had recognized me, and told me to go and make my selections of land for myself and my children, and I told her that that was made a matter of record, and that it ought to be on the rolls in the office, and she told

160 me that the records had been burned up, and that there was no way of finding out if I had been recognized as a member of the Omaha tribe in 1875.

Q. The recognition by the tribe that you refer to was a recognition in 1875?

A. Yes sir. I was received in open council as a member of the Omaha tribe of Indians, me and my children, recognized as such.

Q. After she had heard your statement of the facts, do you know whether she told you that she inquired about that recognition in 1875?

A. Yes sir; she said she made inquiry and she could not find anything that would justify her in giving me my rights.

Q. Then you knew the fact that she reported to the Commissioner of Indian Affairs against your right to an allotment?

A. Yes sir.

Q. You knew that fact?

A. Yes sir.

Q. And she told you that she would have to report against you or that she had reported against you?

A. Yes sir; she told me that she wrote to me to that effect that she would have to report against me.

Q. Some time afterward you were notified to leave the reservation were you not?

A. I- was after I came up on the claim. They wanted to make me pay rent the same as a white person, and I refused to pay rent because I considered it my birth-right, and my rights, and I refused to pay rent and they rejected me.

161 Q. And before you were rejected from the reservation you were formerly notified to leave the reservation, were you not?

A. Yes, to leave the place. I was not notified to leave the reservation. I was notified to leave the place that we occupied.

Q. And you refused to go?

A. Yes, I refused to go.

Q. And then you were forcibly removed?

A. Yes sir, I locked my door, and the police burst it open and took me and put me in the wagon and hauled me and my two children off.

Q. Where did they haul you to?

A. To Bancroft.

Q. Was that off the reservation?

A. Yes sir.

Q. Then you went back yourself afterwards?

A. Yes sir, I went back.

Q. Under whose administration as agent was it that you were removed?

A. Captain Beck. He wanted me to——

Q. Was that the same time that the Kuhns and Sloans were notified to leave the reservation?

A. No sir, it was afterwards. He done that in order to compel me to pay rent to Blenkiron.

Q. You knew that the Sloans were notified to leave the reservation?

A. I heard so. I did not personally see it.

162 Q. You knew that the Kuhns were notified to leave the reservation?

A. I did not know it personally. I heard it.

Q. And that the Peters family were notified to leave the reservation?

A. I would say I did not personally know anything about it.

Q. You knew also, did you not, that Miss Fletcher reported against their claims?

A. Yes sir, as far as I know.

Q. Did you ever have any talk with her about it?

A. Yes sir.

Q. She told you so at the time, that she would have to report against them?

A. Yes sir.

Q. At the same time, about the same time she was going to report against your claim?

A. Yes sir.

Q. And the matter was talked over between you and Miss Fletcher?

A. Yes sir. Of course I tried to get my rights and she rejected them.

Q. You made the best showing you could as you think, and she reported against you?

A. Yes sir.

Q. As far as you know the Peters, and the Sloans, and the Kuhns, and the Baradas also made the best showing they could?

A. I suppose they did; yes sir; they pursued their rights, or for their rights.

163 Mr. WEBSTER: It appears from the allotment roll that the northeast quarter of the southeast quarter of section 7 has been allotted to Mary Tyndal; and the northwest quarter of the southeast quarter of section 7, township 25, range 7 has been allotted to Agnes Springer Milton, the said lands above described being the lands that Mrs. Frost claims to have selected for her son Benjamin, said allotments having been made by Colonel Rankin, and patents issued therefor.

Q. Before you had been ejected from the reservation did you consult with anyone as to whether you should or should not move from the land you claimed?

A. No sir, I thought it was my birth-right, and my rights, and I had a right there, and I think so yet.

Q. Did you consult with anyone about it before you went back after you had been ejected?

A. No sir.

Q. You acted on your own judgment then in refusing to get off, and acted on your own judgment in going back?

A. Yes sir.

Q. Is your husband still living?
A. Yes sir.
Q. Is he on the reservation, or in Highland, Kansas?
A. He is in Kansas, Highland, Kansas.
Q. You have a home down there?
164 A. My husband has.
Q. When was the last time you ever received any annuity, or did you ever receive any annuity payment?
A. Yes sir.
Q. When was the last time?
A. In 187E.
Q. You never received any annuity since?
A. No sir.
Q. And the members of your family have never received any annuity since that date?
A. Well, they might have, of course I could not positively say, but when I received my annuity, as I stated before, that my relative by the name of Eberhambe drew my annuity and brought it to me, and sent it to me, and whether he drew it after that or not I do not know. But at that time he drew it and gave it to me.
Q. In 1875?
A. Yes sir.
Q. As far as you personally know neither you or your children have ever received any annuity since 1875?
A. No sir; they claim that the records were burned, and that my name was dropped off of the roll; and they would not be accommodating enough to go to Washington and hunt them up. My name and my children's names is on the roll in Washington in the Indian Department, but it seems as though they had a prejudice against me some way or other, and did not care about hunting up those things. I can show you rolls where my name is carried on the roll right along with the balance of the Indians, if you choose to see it.
165 Q. I would like to see it if you can show it to me?
A. I meant in 1875.
Q. In 1875?
A. You do not care about seeing that?
Q. No. I thought from your answer that you meant a later time?
A. As I told you, you did not want to hunt that up; they would not hunt that up; they did not care about hunting it up. It is in Washington though all the same on record.

Redirect examination.

Questions by Mr. T. L. SLOAN:

Q. In answer to one of Mr. Webster's questions I notice that you answered him that you selected this land in 1895; was not that the time you built on it?
A. That is what I told him; the time I built on it.

Q. Your selection was made in 1891?
A. Yes sir.
Q. And the children, Frank and Mary Frost were attendants at the school at Santee agency while Philemon was going to school at Highland, is that right?
A. The first year that Frank and Mary were attending the school at Santee I think that Philemon was having his last year at Highland.
Q. It was prior to your moving down and living there, and having a home there?
A. In Highland, it was after I moved up here; Phil was down there yet at school.

Recross examination.

Questions by JOHN L. WEBSTER:

166 Q. When you say you selected the land, what do you mean by that statement, that you selected it?
A. Just like the Indians do when they select a piece of land, they claim it. They say, this is my land; that is the way they do.
Q. I want to know what you did?
A. I claimed that it was mine.
Q. Who did you claim it to, to whom did you make any such claim?
A. To myself and my daughter.
Q. You did not make such claim to anybody else?
A. No sir.
Q. How do you find the land that you wanted to assert a claim to?
A. Mr. Sloan showed me the numbers.
Q. How did he come to show you the numbers?
A. He was clerking at the agency, and that was his business.
Q. Did you go over and consult Thomas L. Sloan about it?
A. I went over to consult Captain William Beck, Mr. Sloan was clerking there at the time.
Q. Did Thomas L. Sloan go out and show you the land, or did he give you a map of it, or what?
A. No, he told me that it laid north west of a certain man that lived out there in a pasture, and if I would go out there this man would show me the land.
Q. You had not been there before that time?
A. Oh, yes, I had been all over that country before.
Q. Why did Thomas L. Sloan show you this, point out to you this particular piece of land?
167 A. Because Mr. Farley had it for pasture, and he objected to the claimants going in there and selecting their lands, and I had my selection on that land, and Captain Beck, and got permission from Farley for me to go in there and make my selection. And didn't Kuhn take me out to show me the land that I was—out where I was going to locate, the numbers?

Q. You went out and looked at it?

A. Yes, sir.

Q. And you thought it satisfied you, and so you, Mrs. Frost, with yourself, meditated over it, and concluded you would select that land?

A. It was Hobson's choice; it was that or nothing. They had taken my other lands away from me. They jumped us, and Miss Fletcher had forbidden me to live on the land, you know. She rejected me, and of course that land was unclaimed and I took it.

Q. So the time when you made this selection was after you had been informed by Miss Fletcher that you were not entitled to an allotment?

A. Yes sir.

Q. Did Thomas L. Sloan advise you to go and make a selection anyhow?

A. No sir.

Q. He did not give you any advice about it?

A. No sir, I do not know that he did. I was like the rest of these half and mixed bloods. They knew that we were Omahas, and they knew we had a right on the Omaha reservation, and they squatted down there, and Miss Fletcher called us squatters
168 and they had just as good a right as any Omaha on the reservation, although we were swindled out of it, and it makes my Indian blood a little hot when I think about it too.

Q. What about white blood, does that get hot too?

A. I guess that gets hot too. There is my cousin, he is my own cousin, and he got his land and I did not get mine. He is pretty well situated. He is an Omaha Indian, and I am an Omaha Indian too.

Q. Do you claim to be a white woman?

A. No sir, no, no. I am not a white woman.

Q. So you are three-fourths white blood which you ignore altogether?.

A. Yes sir, I ignore it. I want to be a full blood Indian.

Q. To that extent you despise the white race?

A. I do not think very much of them. That is the truth of it. I would be willing to put on the blanket and the moccasins to-day. I like my Indians for all they have not treated me right. They have listened to white people, and they have not done exactly right.

Witness excused.

By consent of the parties hereto the signature of the above witness to this deposition is hereby waived.

169 ANTOINE CABANA, a witness produced in behalf of the complainants being first duly sworn, deposes and says, as follows:

Direct examination.

By Mr. THOMAS L. SLOAN:

Q. How old are you, Mr. Cabana?
A. 73 years old.
Q. Do you know Margaret Sloan and Antoine Barrada?
A. Yes sir.
Q. What relation do you sustain to them?
A. Margaret Sloan was my aunt, and Antoine Barada was my uncle.
Q. Do you know John Pilcher?
A. Yes sir.
Q. What relation were you to him?
A. Cousin to John Pilcher.
Q. What degree of Indian blood are you, if you know?
A. I have always thought I was one-quarter.
Q. And the rest white?
A. Yes sir.
Q. Have you an allotment of land on the Omaha reservation?
A. Yes sir.
Q. How many acres?
A. A quarter section or 160 acres.
Q. Are you a married man?
A. Yes sir.
Q. Who is your wife?
A. Anna Cabana.
Q. Is she Indian?
170 A. No sir.
Q. A white woman?
A. Yes sir.
Q. Is she a member of the Omaha tribe of Indians?
A. Yes sir.
Q. Has she an allotment?
A. Yes sir.
Q. Does she draw annuity money payment?
A. Yes sir.
Q. Do your children have allotments of land?
A. Yes sir.
Q. Do they draw annuity money?
A. Yes sir.
Q. What degree of Indian blood are they?
A. They are about one-eighth, are they not.
Q. Have you any grand children?
A. Yes sir.

Q. They have allotments of land?
A. Yes sir.
Q. Do they draw annuity money?
A. Yes sir.
Q. What degree of Indian blood are they?
A. One-sixteenth.
Q. Did you know the children of Margaret Sloan and Antoine Barada?
A. Yes sir.
Q. Were any of those persons named and their children, Margaret Sloan, Antoine Barada, and their children, were any of those at any time recognized as members of the Omaha tribe?
171 A. I always thought so.
Q. You may state in what that recognition consisted?
A. Well, first and foremost they got the land on the Nemaha reservation.
Q. Of the Government?
A. We had to be proved, to be identified as Omahas before we could get it.
Q. Anything else?
A. We went on and received an allotment, certificate of location they called it then. In 1859 I believe the patent was issued and enjoyed it.
Q. Were you with any of them among the Indians at any time?
A. Yes sir.
Q. When?
A. In 1854.
Q. Who with?
A. Margaret Sloan and Artemesia Sloan and John Sloan.
Q. Did Margaret Sloan receive any recognition at that time?
A. They all came to us and they were glad to see us, and claimed my mother claimed Mrs. Sloan to be her sister.
Q. Who else called on her at that time?
A. One of her sisters, and the Indians.
Q. Do you remember the names of any of the Indians who called on her?
A. Eberhambe, and a man named Noise, an Indian.
Q. What relation was Noise to Margaret Sloan?
A. He claimed *he* was *her* niece.
Q. Did he say anything at that time in regard to recognizing her?
172 A. Yes sir, he was glad to see her, and would be glad if she would come up and stay with them, and my mother always did.
Q. Did Noise say anything about his recognizing in the appearance of Margaret Sloan that of anyone else?
A. Yes sir, he welcomed her, and said that she was welcome.
Q. What else did he say?
A. He asked them to come and live with them.

Q. Were you present when any annuity moneys were paid to any of the Sloans or the Barada family?
A. No sir.
Q. Were you with them?
A. I was with them.
Q. State the circumstances?
A. I heard their names called.
Q. Whose names called?
A. William H. Sloan, Mike Barada.
Q. By whom?
A. Cabanas.
Q. In response to your name what occurred?
A. I went and got my money.
Q. Were the others called on the same occasion?
A. They were called at the same time, all of them.
Q. Did they respond to the call of their names?
A. It appeared so to me for every one went that direction.
Q. Where was the payment being made at that time?
A. At the Omaha agency here.
Q. In an office?
A. Out of doors. It was paid in the office, but we never got to the office. The Indians would bring it out to us. Mine was
173 counted out to me on a log by my Indian relation, my uncles or some of them, they counted it. Curious too, they could count. I recollect getting five or six hundred dollars one time.
Q. Do you know where Margaret Sloan lived since 1881?
A. Yes, sir.
Q. Where?
A. She lived out here about a mile or two from the Logan north of the Logan.
Q. How far from Bancroft?
A. About four miles.
Q. Three or four?
A. Three or four miles. I know she used to walk it.
Q. The land reserved for her being the northeast quarter of section 20, township 24, range 8. Do you know George Lamson?
A. I do.
Q. Is he an Indian?
A. No sir, not that I know of.
Q. Are his children paid annuity money?
A. I think they have.
Q. Are his children paid annuity money?
A. Yes sir.
Q. Do you know Swan Olsen?
A. I know him.
Q. Is he a white man?
A. Yes sir.
Q. Do his children receive annuity money?

A. At least he has told me that the children were getting money. They are on the roll.

174 Q. Do you know Fred Cayou?

A. Yes sir.

Q. Is he a white man?

A. Yes sir.

Q. Do his children receive annuity money?

A. I believe they do.

Q. Do you know Benjamin Phillips?

A. Yes sir.

Q. Is he a white man?

A. Yes sir.

Q. Do his children receive annuity money?

A. Yes sir.

Q. Do you know Brownrigg?

A. Yes sir.

Q. Is he a white man?

A. Yes sir.

Q. Do his children receive annuity money?

A. Yes sir.

Q. Do you know George Lieb?

A. Yes sir.

Q. Do his children receive annuity money?

A. Yes sir.

Mr. WEBSTER: The defendants object to, and move to strike out of the deposition all that part relating to the above enumeration of persons who received annuity moneys, for the reason that none of said persons are involved in these litigations.

175 Q. How long have you been familiar with the customs of the Omaha tribe of Indians?

A. About 54 years.

Q. What is the custom or usage in regard to the recognition and enrollment of the children of white men married to Indian women, or Indian women with mixed blood?

Mr. WEBSTER: To which question, and any more that may be asked along that line, or the same lines, the defendants object to as incompetent and improper, as well as irrelevant and immaterial.

Q. Well, they place them on the rolls as soon as they are born. In early days the white men were on the rolls.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Mr. Cabana, is it not true that for the last 13 years that no outside persons have been admitted into the tribe and their names placed upon the rolls?

A. For 13 years. As soon as children were born they are placed on the rolls.

Q. That has been of children whose parents were themselves recognized as members of the tribe, was it not?

A. Yes sir.

Q. But now what I want to get at is, if the parents were not members of the tribe no such names have been put upon the roll for a period of 13 years or more, have they?

A. I do not know of anybody else but the Omahas.

Q. I am speaking of the Omahas?

176 A. Yes, sir, nothing else but Omahas.

Q. You mean Omaha Indians?

A. Yes sir.

Q. When you speak therefore of the former custom of putting on the names of children as soon as they were born, you were referring only to cases where the parents were at that time recognized as members of the tribe?

A. Yes sir.

Q. If the parents were members of the tribe their children would naturally be members of the tribe, would they not?

A. Yes sir.

Q. And it was such children that you speak of whose names were put on the rolls when they were born?

A. Yes sir.

Q. These times that you described when you and Margaret Sloan were welcomed by the Indians at Bellevue in 1854, that is now 48 years ago?

A. A good while ago.

Q. And what you have related about that is simply your recollection of what occurred 48 years ago?

A. Yes sir, and my practical experience amongst them since.

Q. I am speaking about what was said to Margaret Sloan?

A. Yes sir.

Q. And they said their relatives were glad to see her?

A. Yes sir.

Q. Mr. Cabana, would you not be glad today to see any relatives you had who would come to see you from some city far off that you had never seen before?

177 A. Yes sir.

Q. Likewise these Indians had that instinctive human nature that they were glad to see a relative who had come to see them who had never seen them before?

A. Yes sir.

Q. And that is the welcome you spoke of when you spoke of what they said to Margaret Sloan?

A. I believe they recognized her to be an Indian. They did me; I have been recognized ever since.

Q. Now, Mr. Cabana in what language did they speak to Margaret Sloan when they said they were glad to see her?

A. They would speak in Indian to her.
Q. That was in the Indian tongue?
A. Yes sir, It was however, it was not a council, it was Indians that met in my mother's house.
Q. Private or social conversation?
A. Yes sir.
Q. And at that time did you talk the Omaha Indian language?
A. No sir.
Q. Did Margaret Sloan talk the Omaha Indian language at that time?
A. Very little; she could understand a little, but my mother——
Q. Margaret Sloan at that time talked what language?
A. English language and the French language.
Q. And you talked what language?
A. The French language and the English language.
Q. Now, then, when you heard them say to Margaret that she was welcome, and they were glad to see her, how do you know that that was what they said?
178 A. My mother would interpret it to me and my aunt.
Q. So your testimony now of the conversation that occurred 48 years ago related to statements which the Indians made which you could not understand and you speak of it simply as someone else interpreted it to you?
A. We were altogether, you know, and we could not help it because my mother would say, this is your uncle, and this is your aunt, and this is your great grand mother, and of course we understood that, either in French or English.
Q. You understood what your mother said as interpreter?
A. Yes sir.
Q. You did not understand what the Indians said any more than what I would understand what an Indian chief might undertake to say to me in the Indian language, particularly of the Omaha Indian tongue?
A. I could see their sympathy; that they were glad to see us.
Q. You do not suppose that if one of these Indian chiefs would shake hands with me and say something to me but that I would infer that it was a recognition of greeting?
A. If I would meet an Indian chief I would know today what he meant.
Q. Can you talk the Indian language today?
A. Very little, enough to understand their ways and their customs.
Q. But in 1883 and 1884 you could not talk it at all?
A. Well, yes, I could say some few words. I have not forgotten it, from the age of three or four years, when I knew that my
179 folks would always call me the Omaha in the city of St. Louis where I was raised, and there was lots of those Indians that would keep it up, and white men.

Q. When you talked with Margaret Sloan, what language did you use?

A. I talked French to her, and sometimes I would give—I would say some Indian words to her, and she would to me, something that would catch. I knew I was an Indian ever since I could walk. My father used to be a trader, and he had lost of those French come down. The first thing you know they would introduce some of the Indian words, and I kept a recollection of them, St. Louis was partly filled up with Indians and French. Some of my people denied it.

Re-direct examination.

Questions by Mr. T. L. SLOAN:

Q. Mr. Cabana, Mr. Webster asked you if only the children whose parents were members of the tribe were enrolled during the past 13 years? Is it not a fact that during the past 13 years and in fact all the time that you know the Omahas, up to date, that the children of white men, which white men were not members of the tribe, but the mothers were, of such children, that such children were enrolled and recognized as members of the tribe?

A. Yes, I said Omahas. My wife had been put on the rolls during that time I guess, but I thought you adopted Omaha.

Q. Those white men to whom I referred, namely George Lamson, Ben Phillips, Lew Brownrigg, Fred Cayou, George Lieb, John Wickersham, Fred Essex, Adolph Hanicke, Swan Olsen, are all white men who are not members of the Omaha tribe of Indians?

180 A. They are not members.

Q. And they each of them have children which had been placed upon the roll within the past 13 years, have they not?

A. Yes sir; I meant the Omahas. The children of the Omaha women were all placed on the roll.

Q. How late is the last one of these enrollments of the class of children, that you know of?

A. Three years.

Q. Who was that?

A. That was Paul Cabana.

Q. Did you know the children of Pearl Campbell, and Fred Essex being enrolled during the past year?

A. Yes sir, but they are children of the Omaha women.

Q. Excuse me. Mr. Webster used the term, parents, which would mean both father and mother?

A. I did not understand it in that way, Mr. Sloan. Their mother was an Omaha. They were placed on the roll prior to that time too. I want to be honest about it. I did not take in the white men, because I think these children were born of Omaha parents.

Recross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. These children you spoke of in your re-direct examination they were children that were born on the reservation and whose mothers were Indians, Omaha Indians?

A. Some of these children were born as far west as California and they are placed on the roll, away off, some part of the east and some parts of the south.

181 Q. I have not quite gotten through with my question. Mr. Cabana you did not wait until I finished my question, so your answer came a little too quickly. To meet your answer I will subdivide it. You give me the name of the children from California, or the child who has been put on the roll?

A. Mr. T. C. Cabana has a couple children that were born in California and placed on this roll.

Q. Where was the father and mother at the time when their names were placed on the roll?

A. In California I think.

Q. Now the father and the mother had been on the roll of the Omaha Indian tribe before they went to California, had they not?

A. Let us see; I do not recollect whether they were enrolled here; yes sir; they certainly must have been.

Q. So the case you speak of then is a case where the parents had theretofore been recognized as members of the Omaha Indian tribe, and that is why their children were enrolled, is not that true?

A. They were on the roll before they went there.

Q. And how long had the names of the parents been on the roll as members of the Omaha Indian tribe before they went to California and before these children were born that you have spoken of?

A. How long before?

Q. Yes sir, how many years?

A. Tom Cabana has been placed on its roll ever since 1863.

182 Q. And Tom Cabana was the father of these children?

A. Yes sir.

Q. Well, now, don't that apply—that same principle apply to every other case that you have in mind, and that you have spoken of?

A. Really I do not understand what you are coming at.

Q. I mean that in every other case where you spoke of the child being enrolled that was not born on the reservation was not the father and mother both on the rolls of the Omaha Indian tribe and recognized as members of the tribe?

A. They would have to be.

Q. Now, can you tell me of an instance where a child that was not born elsewhere, but born on the reservation whose name went on the roll, unless either the father or the mother had theretofore been enrolled and were members of the Omaha tribe of Indians?

A. I could not answer that.

Q. Is it not true, Mr. Cabana, that the names of new persons can not get on the roll without the approval of the agent and the Commissioner of Indian Affairs?

A. I never knew that they had to go—I thought the Indians had a perfect right to recognize their people.

Q. You thought that?

A. Yes sir.

Q. Have you had occasion lately to inquire about that?

A. Well, I know that the Indians had a right to adopt and deny any who they pleased, and then the Government—the agent should sanction it.

183 Q. And is it not true that if the tribe should adopt, that that adoption requires the approval of the Commissioner?

A. I never knew that. I think they can adopt them without; that is my theory about it.

Q. Do you know of any case where there has been a contest over the matter lately from which you can form an opinion?

A. No, just in our case. My wife's case and my sisters down in the Osages, they were adopted and received into membership.

Q. By what tribe?

A. By the Osages.

Q. As far as you know the Commissioner of Indian Affairs approved of that adoption?

A. Oh, yes.

Q. Well, did you not know that a question of that kind arose on this reservation when Margaret Sloan and Thomas L. Sloan sought adoption into the tribe that the matter was submitted to the Commissioner of Indian Affairs and there disapproved?

A. Yes, but if they had complied with the Indian request at the time they could have done as I did.

Q. Don't you know the fact that the matter went to the Commismissioner of Indian Affairs, and that he finally acted upon the matter?

A. No, I do not know that.

Q. Have you not so heard that and understood it?

A. I understood this rejection and these things, but I thought that the Indians could receive and adopt who they pleased. That has been my theory all the time. These people all have been invited when I was received in Major Paynter's time.

184 All these people had been invited here. All these Omahas here that is in this house today had been called for.

Q. Name those that you refer to?

A. Antoine Barada, Margaret Sloan, Michael Barada, Mrs. Peters, and in fact they are too numerous to mention, in the years I came up here.

Q. Since you have given out new matter I will have to ask you a few more questions. Mr. Cabana, did you see any letter of invitation to Margaret Sloan to come to the reservation?

A. I did not see any letters.

Q. Did you see any letter to Peters, or any one of those persons you have named to come to the Omaha reservation?

A. I saw no letters, but privately. I was instructed privately by the agent and the Indians.

Q. Will you please tell me the name of the agent that privately said to you to ask either Sloan, or Peters to come to the reservation?

A. Major Paynter.

Q. Major Paynter was the agent?

A. Yes sir.

Q. Now where was Major Paynter when he privately said to you to ask these people to come to the reservation?

A. What I mean privately is personal standing in the council.

Q. I am asking you, where was this?

A. At the agency, at the Omaha agency.

Q. When?

A. About 1859 I guess.

185 Q. About 1859 or earlier than that? What particular person did Paynter ask you privately to have come to the reservation in 1859?

A. Major Paynter did not know the people; but the Indian leaders told me that he wanted all their people here, and told me to tell them to come.

Q. You think it was Paynter?

A. The agent also sanctioned. These Indians now today I can prove it by them.

Q. When Paynter told you that in 1859 did you go and tell these people that you have named, in 1859 what Paynter said to you?

A. I did.

Q. But they did not come, did they?

A. They could not come, some of them.

Q. They did not come?

A. Some came.

Q. Well, now, just a moment. Who came in 1859 on your invitation?

A. I do not know; they came years afterwards.

Q. Which one of those persons, *and* you name them; which one of those persons came on an invitation that Paynter gave you in 1859, give the name of the Indian that came?

A. They did not come in 1859, they could not, but they came soon afterwards.

Q. It is the name of the Indian that I asked you about, did you tell them before they came?

A. All my sisters came afterwards.

186 Q. Name one of these Indians that are here. You are speaking of these here. Now, name them, of one of them that you went to and told them what Paynter said?

A. Mike Barada came, and William Ed. Sloan came.

Q. Now wait a minute. When did you go and tell Mike Barada what Paynter said to you?

A. Mike Barada knew it as well as I did.

Q. You got the invitation as I understood from Paynter privately to tell it?

A. I did not privately. I told you that the Indian council was there when they agreed on it.

Q. You told Mike Barada, when and where did you tell him?

A. I went back to Richardson county to tell him, to tell them all.

Q. Did Mike Barada come when you told him that?

A. Yes sir, Mike was here.

Q. When did Mike Barada come?

A. I guess he came, Mrs. Barada.

Q. I am talking about Mike.

A. Mike Barada was here in 1861 or 1862. He was here backward and forward, we thought nothing of it.

Q. Now did you ever tell William Ed Sloan what Paynter told you?

A. Yes sir.

Q. When and where did you tell William Ed Sloan about that?

A. I told him in Richardson county.

Q. Did William Ed Sloan go to the reservation?

A. Yes sir.

Q. When?

A. Shortly after that. They came up in 1862.

187 Q. Is it not true that William Ed Sloan never had an allotment on the Omaha reservation in his life time?

A. I did not say he had.

Q. He never was received by the Omaha Indian tribes and placed on the annuity roll or received an allotment of lands?

A. I do not know that he did.

Q. Did Mike Barada ever receive an allotment on the Omaha reservation?

A. No.

Q. Well, now then these two persons that you have named that you say that you invited to come on the invitation from Paynter, it transpires that neither of these persons were ever received by the Omaha tribe as members thereof, and they never received an allotment of land?

A. I did not say that Major Paynter himself privately, but I said the Indian council and the agent. I came up on that myself. I am one of them that came up.

Q. Is it not true that not one of the persons who are involved in these lawsuits ever came here and received an allotment of lands on the Omaha Indian reservation on account of any invitation of Paynter, of the Omaha council, or of anybody else?

A. Mr. Barada came here, the old gentleman, and they offered him land, but he was mad and returned home, old man Barada did.

Q. What did he come here for if he got mad?

A. He thought he would come here, and he thought they thought more of him than that; they used to recognize him in going backward and forward; the Omahas would stop there and feast with them.

188 Q. What did he get mad about?

A. I could not tell you.

Q. He would not stay here?

A. No; they offered him land and he would not take it.

Q. Then as a matter of fact he never became a member of the Omaha tribe of Indians?

A. No.

Q. Then it required something more than what Paynter said to you to make these people members of the Omaha tribe and entitle them to allotments of land, was it not?

A. I think we belonged to the tribe from the time we were born.

Q. You thought you was?

A. Yes sir, I think they were too. They have aunts and uncles that knew more about it than I did.

Q. Your idea was that everybody belonged to the Indian tribe if they had any Indian blood in their veins at all?

A. No sir. I knew the difference between the white man and the Iowa Indian or the Otoe Indian, or the Omaha. I knew we had to prove who we were.

Q. You had to go to the tribe and prove to the tribe that you had Indian blood before you were received or recognized?

A. My dear sir, they knew me better than I did them.

Q. Why did you say you had to prove up?

A. I proved up in Richardson county under the treaty of 1830.

Q. You had to prove up your right?

A. That we were Omahas.

Q. You had to prove that you were mixed blood before you could get an allotment on the Omaha reservation?

A. Yes sir. We gained from that time on.

189 Q. You mean simply that you were of the mixed blood Omahas?

A. Yes, sir, but we had to be of Omaha blood and Iowa blood and Otoe blood and Santee band of Sioux blood; we knew that.

Q. You knew at the same time, did you not that the law entitled you to an allotment on the Nemaha reservation if you were of the mixed blood Omaha?

A. Yes sir; I was to prove that. There is intrigues in everything. In 1849 to 1859 these Indians were nice people, they were good and generous.

Q. Their degeneration has come since you people got a lot of white blood mixed in with them?

A. They are so now that they are as mean as anybody. I never had trouble with the Omahas.

Q. Do you live on the reservation?

A. I live in the town, but my farm is right next to town. I have lived there. I left there in March and went to town. I am going back again to the reservation.

Q. Will you tell me the names of some of the Indians that were at that council at the time when you say Paynter told you to ask these people that you have named to come to the reservation?

A. I do not believe I can, I do not believe. Fontenelle might if he was living. Lieb, I do not know as to Lieb, whether he would either, I know we were all there. Some of the old blanket fellows might know. I do not believe they were old enough. I do not know but White Horse would, but I could not name whether they were there or not?

Q. You cannot now tell the name of any Indian that was at that council that heard the conversation that you speak of?

190 A. Oh, I guess I could.

Q. Tell me some Indian that was there? Was Wajapa there?

A. I do not know. He might have.

Q. Was White Horse there?

A. I did not know him at that time.

Q. Was Sinta Haha there?

A. I do not think so; he might have been somewhere around, playing around the agency.

Q. Is it your idea then that all the men that were likely at that council, or had this conversation with you are now dead?

A. No, I do not have that idea, but I know there is some of them living, but I could not name them. I am not very well acquainted with them by names you know, and they know me better than I know them. I do not mix in with them much only I bid them the time of the day.

Q. You think a good deal of the Omaha Indians?

A. I do.

Q. Did anybody authorize you to say you did not know them and cannot call their names?

A. I did not say I did not know them, but I cannot tell their names. I know some few of them. They know me better than I know them.

Q. The truth is, Cabana, that you are for all practical purposes, a white man and you have a white wife, and you associate with the white people, and you do not know anything about these Indians except you have an allotment on the reservation and draw an annuity?

191 A. That is my privilege. I know them, and I do not suppose I got an enemy amongst them.

Re-direct examination.

Questions by Mr. T. L. SLOAN:

Q. From whom did you take your blood—I mean your Indian blood, your father or your mother?

A. My mother, a pretty good old woman she was too.

Q. Who was the agent that placed the names of your son, Tom Cabana and his wife upon the annuity roll?

A. I cannot tell that now; I do not recollect. I was away pretty near most of the time you know.

Q. Don't you remember that it was Spencer that did it?

A. Spencer done some of it.

Q. Where was your son Tom at the time the allotment was made by Miss Fletcher? Was he not in California at that time?

A. I believe he was.

Q. And it was not until after the allotment was made that his name was placed on the annuity pay-roll, was it—

A. It was shortly after that.

Q. Was there a delegation of Omaha Indians that came to the Nemaha reservation and gave notice that the mixed bloods should come to the reservation and take allotments under the treaty of 1865?

A. Nemaha reservation, was it not? They came there.

Q. They came there and told them to come up here and take their allotments?

A. Yes sir.

Q. Did any such delegation of Indians come to you?

192 A. Yes sir; they came to me.

Q. Did they give you notice to come up and take allotments?

A. They notified us all. They went to Baradas and Sloans and there they killed them a beef and hogs, and visited them, and they would recognize us when they passed through the country going down to the Iowas, and going down to the Osages, and all them southern Indians, and make it their business to stop.

Q. After you got that notice did you come up and make a selection of land?

A. I made it before that. There is some Indian agent. Paynter said that I could make my selection.

Recross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Mr. Cabana, are you a relative of the Sloans and the Peters?

A. Yes sir.

Q. And of course you have quite a friendly interest in having them succeed?

A. I believe they are perfectly entitled to it. I would not say it if they were not. I cannot help but feel for my aunts and uncles, that would be natural.

Q. And you know at the same time the tribe have me appointed to resist their claims?

A. Yes sir.

Q. And are denying their rights in this litigation?

A. Yes sir.

Q. So in that respect, Mr. Cabana, an Omaha Indian as you say, you are standing up here and fighting your tribe, are you not?

A. No sir.

193 Q. You are trying to do justice?

A. They came to me this way. Fontenelle asked me for money, says I, Henry, is it advisable, would it be practical for me to give you money to fight my brother, your aunt or uncle? I would not listen to them. I think they are just as much entitled to this land as I am.

Q. You cannot get into a quarrel with me on that proposition?

A. I am sorry this thing has taken place.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

194 WILLIAM F. SPRINGER, a witness produced in behalf of the complainants, being first duly sworn, testified as follows:

Direct examination.

By Mr. THOMAS L. SLOAN:

Q. Do you know Guy Lambert?

A. Yes sir.

Q. Do you know May C. Neale Lambert?

A. Yes sir.

Q. What degree of Indian blood is she, if you know?

A. I could not say.

Q. Is she less than a full blood?

A. Yes sir.

Q. To whom is she married, a white man or an Indian?

A. A white man.

Q. Where do they live?

A. Decatur, Nebraska.

Q. Is that off of the reservation?

A. Yes sir.

Q. Have they had a child born to them since they are living there?

A. Yes sir.

Q. Has that child been enrolled?
A. Yes sir.
Q. Do you know Margaret Diddock?
A. Yes sir.
Q. Do you know what degree of Indian blood she is?
A. Somewhere near full blood.
195 Q. She is less than full blood, is she?
A. Yes sir.
Q. Is her husband a white man or an Indian?
A. Her husband is a white man.
Q. Do they have any children?
A. Yes sir.
Q. Are they enrolled?
A. Yes sir.
Q. Do you know what number of children there are?
A. I think they have three.
Q. Do you know Clara Hogan?
A. She is my sister.
Q. What degree of Indian blood is she?
A. Three-fourths.
Q. What is her husband?
A. A white man.
Q. How many children have they?
A. Five.
Q. Have their children been enrolled?
A. Yes sir.
Q. Do you know Rosalie Farley, or rather, did you know her during her lifetime?
A. Yes sir.
Q. Did you know her husband?
A. Yes sir.
Q. Was he a white man or of Indian blood?
A. He was a white man.
Q. Do you know their children?
196 A. Yes sir.
Q. How many are there, if you know, the number?
A. If I remember right there is seven of them.
Q. There are eight I think enrolled?
A. Yes sir.
Q. Do you know Josephine Lamson?
A. Yes sir.
Q. See if this list of the children is correct: Birdie, Florence, Amos, Grace, Zoe, Harriet, William H. George & Francis, do you know these children (counsel reading from a list)
A. Yes, sir, if the list is correct.
Q. Were their fathers white men or not?
A. Yes sir.
Q, Do you know Jennie Phillips?
A. Yes sir.

Q. Do you know the children of Jennie Phillips, Blanche, Hazel, Roy and Myrtle?
A. Yes sir.
Q. Is their father a white man or not?
A. A white man.
Q. Do you know Etta Brownrigg?
A. Yes sir.
Q. What degree of Indian blood is she, do you know?
A. She is mixed.
Q. Do you know her children, Glen, Marion, and John L.?
A. Yes sir.
Q. Is their father a white man or Indian?
A. A white man.
Q. Do you know Meumbathe Cayou?
A. Yes sir.
197 Q. Do you know Lee Cayou and Frank Cayou?
A. Yes sir.
Q. Was their father a white man or an Indian?
A. A white man.
Q. Do you know Mary Lieb?
A. Yes sir.
Q. Do you know her children, Andrew, George, Arthur, and John and Silas?
A. Yes sir.
Q. Are they enrolled?
A. Yes sir.
Q. Is their father a white man or an Indian?
A. A white man.
Q. Do you know Lizzie Wickersham?
A. Yes sir.
Q. Is her father a white man or an Indian?
A. A white man.
Q. Do you know the children, Arthur, Jessie, Henry and Ernest?
A. I know the oldest one.
Q. Do you know whether the father is an Indian or a white man?
A. A white man.
Q. Do you know Phillis Hull?
A. I do not.
Q. Do you know Victoria Hull?
A. Yes sir.
Q. Do you know whether her husband was a white man?
A. Her husband was a white man.
Q. Do you know Elizabeth Lamson?
A. Yes sir.
198 Q. Do you know her children, Alta, Roy, Mamie, Frank and Josephine?
A. Yes sir.
Q. Is their father a white man or an Indian?
A. A white man.

Q. Do you know Eeleen Lawless?
A. No sir.
Q. Chase's sister's child?
A. I know of her.
Q. Do you know Charles Lawless?
A. Yes sir.
Q. Is he a white man or an Indian?
A. A white man.
Q. Do you know Garry Meyers?
A. Yes sir.
Q. Do you know whether his father is a white man or an I ndian?
A. I do not.
Q. Do you know Josephine von Felden?
A. Yes sir.
Q. Do you know her children, Guy, Garry and Roy?
A. I know Guy.
Q. Was the father of her child a white man or an Indian?
A. A white man.
Q. Do you know Mrs. Emily Campbell?
A. Yes sir.
Q. Do you know her children Eliza, Ida, William and Pearly?
A. Yes sir.
Q. Is her father a white man or an Indian?
A. A white man.
199 Q. Do you know Pearly Campbell?
A. Yes sir.
Q. Do you know her husband, Fred Essex?
A. Yes sir.
Q. Do you know their children?
A. I do not.
Q. Do you know that they have a child born?
A. Yes sir.
Q. Do you know where they live?
A. I do not at the present time.
Q. Do you know whether they live in the town of Pender or not?
A. I do not.
Q. Do you know whether Essex is a white man or an Indian?
A. A white man.
Q. Do you know Florence Hanicka?
A. Yes sir.
Q. Do you know their children, William, Mary, Pearl, Francis, Florence and Lilian?
A. Yes sir.
Q. Is their father a white man?
A. Yes sir.
Q. Do you know Robert Lewis, Fred Lewis and Antoine Lewis?
A. Yes sir.
Q. Do you know whether their father is a white man or an Indian?
A. A white man.

Q. Do you know Hershal and Blanche Olsen?
A. Yes sir.
Q. Is their father a white man?
A. Yes sir.
200 Q. Do you know Stephen Guitar?
A. Yes sir.
Q. Do you know whether his father is a white man or not?
A. Only what my uncle told me, that his father was a white man.
Q. Do you know Louisa Gilpin?
A. Yes sir.
Q. Do you know whether her father is a white man or an Indian?
A. A white man.
Q. Of all the white men whose names I have referred to, are any of them members of the Omaha tribe of Indians?
A. I do not understand.
Q. Of all the white men I have named, Lambert, Diddock, Hogan, Farley, Lamson, Pilcher, Phillips, Brownrigg, Cayou, Lieb, Wickersham, Hull, Lamson, Charles Lawless, Garry Meyers, von Felden, Campbell, Essex, Hanicka, Lewis, Olsen, Guitar, and Cayou, were any of these men members of the Omaha tribe of Indians?
A. They were not, excepting Guitar.
Q. Was the father of Stephen Guitar a member?
A. No sir.
Q. I refer in each instance to the father?
A. No.
Q. Referring particularly to the family of Lambert, where did they reside since their marriage?
A. Decatur.
Q. The child named here as appears on the roll, Guy N. Lambert, was he born there?
A. He was.
201 Q. And the father, what blood is he?
A. White.
Q. And not a member of the tribe?
A. No sir.
Q. The Essex' you do not know where they lived when the child was born?
A. They were living in Pender.
Q. Not on the reservation?
A. No sir.
Q. And the father was a white man, and not a member of the tribe?
A. Yes sir.
Q. Is it not a fact that it is the custom of the Omaha tribe of Indians, is now, and has been to enroll the children of mixed bloods Indian women, or full blood Indian women who were married to white men, which white men were not members of the tribe?
A. Yes sir.

Q. What is the latest instance that you have of that fact being carried into effect?

A. I think May C. Neale Lambert is the latest one that has been put on the roll.

Q. Look at this date here and see if that is not the latest? (Indicating.)

A. It probably is, but the one I have reference to is the latest to my knowledge.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

202 Q. Mr. Springer, in all of these instances that you have mentioned the mother was a member of the Omaha tribe of Indians?

A. Yes sir.

Q. And the mother was so recognized by the tribe before the birth of these children?

A. Yes sir.

Q. Then in no one instance that your attention has been called to was the case of the adoption into the tribe of a child where neither one of the parents were members of the Omaha tribe of Indians?

A. No sir.

Q. Then the fact is that no child is put upon the roll unless one of the parents was theretofore and at the time a member of the tribe?

A. Yes sir.

Q. And is it not true that even in that case that I have mentioned where one of the parents was a member of the tribe, that the question of whether or not the child shall be accepted into the tribe and its name go upon the annuity roll, is a question to be submitted to the Indian agent or the Commissioner of Indian Affairs?

A. That is true.

Mr. SLOAN: What is true?

Q. By that do you mean that it must have the approval of the agent and the Commissioner?

A. Where the mother or the father is a recognized member of the tribe and the child—if a child is born to them, the child is recognized as a member of the tribe without reference to either the agent or the Commissioner.

203 Q. Can the name go upon the roll without the approval of the agent?

A. I think it can.

Q. How?

A. I think so, yes sir.

Q. Does not the agent make up the annuity roll?

A. Yes sir.

Q. Can anybody put a name on the annuity roll other than the agent?

A. No sir.

Q. Then if a name goes on the annuity roll it is first submitted to the agent and by him approved before it is entered upon the roll?

A. Yes sir.

By Mr. SLOAN:

Q. Is it not the duty of the agent to enter up the name of such child whether he cares to approve of it or not under the custom?

A. Well, I do not know to that extent, but I know that where a parent, either mother or father is a member of the tribe and has a child born to them, that it has been a custom to put that child upon the roll as a recognized member of the tribe.

Q. And when it is reported to the agent it is his duty to do so?

A. Well, it always has been to my knowledge.

By Mr. WEBSTER:

Q. Don't you know it to be a fact that the agent does not do so without getting the approval of the Commissioner of Indian Affairs?

A. I presume that is true.

204 Q. Then it is not true that the name cannot go upon the roll without having the approval of the Commissioner of Indian Affairs?

Mr. SLOAN: Let me interject there as a matter of explanation and thus save me putting on other witnesses:

Are the annuity rolls before they are ever paid sent to the Commissioner for approval, or are they not made up and immediately paid? Does the roll ever go forward to be approved before payment?

A. No sir, they are made up here and then paid before they are sent to the Commissioner.

By Mr. WEBSTER:

Q. Then is it not true that the name cannot go upon the roll without having the approval of the Commissioner of Indian Affairs?

A. I do not know.

Q. Let me see whether these children you refer to are not children that have been born upon and lived upon the Indian reservation as other children on the Indian reservation are brought up. For illustration. I will call your attention to some of the names you mention. The child of Clara S. Hogan or rather the children of Clara S. Hogan, four in number; Clara S. Hogan is a member of the Omaha tribe of Indians?

A. Yes sir.

Q. Now the four children were born upon and brought up on the reservation?

A. Yes sir.

Q. And live there now?
205 A. Yes sir.
Q. Take the case of Edward Farley, there were 8 children that were born on the Indian reservation?
A. Yes sir.
Q. And live on the Indian reservation?
A. Yes sir.
Q. On lands allotted to their mother?
A. Yes sir.
Q. Is that true of the Hogan family, that they were born, and live on lands allotted to their mother on the Omaha Indian reservation?
A. Yes sir.
Q. We will take next the Lamson family, nine children, were they born on the Indian reservation?
A. Yes sir.
Q. And brought up on the Indian reservation?
A. Yes sir.
Q. And live on the Omaha Indian reservation?
A. Yes sir.
Q. Then, Mr. Springer, without going through the entire list, is it not true that substantially all the children that you have named in response to the questions of Mr. Sloan, were cases where the children were born upon the reservation, lived upon the reservation, and upon lands which had been allotted to their parents on the Indian reservation?
A. Yes sir.
Q. So that to all intents and purposes the children referred to in your answers to Mr. Sloan were Indian children which had
206 been born, educated and brought up on the Omaha Indian reservation?
A. Yes sir.
Q. And upon land which had been allotted to their parents?
A. Yes sir.

Redirect examination.

Questions by Mr. T. L. SLOAN:

Q. In respect to Josephine Lamson, was she born on the Omaha Indian reservation?
A. I do not know.
Q. Is it not true that she was born upon her father's homestead down in Burt county?
A. I do not know.
Q. You do not know that she was born on the Indian reservation?
A. No sir.

Q. Do you know where Phillis Hull was born?
A. I do not.
Q. You do not know that she was born on the reservation?
A. No sir.
Q. Do you know the fact that Guy N. Lambert was born off of the reservation?
A. Yes sir.
Q. And Fred Essex' child?
A. Yes sir.
Q. How about the children of Mary Cabana and William Lewis, were they born on the reservation?
A. I do not know.
Q. Is it not a fact that they were born in Bancroft?
A. I do not know.
207 Q. Well, here is a case you possibly know about. Eliza Campbell, is it not a fact that she was born down in Richardson county?
A. I do not know.
Q. Do you know the fact that she was a grown girl when the family moved to the reservation?
A. I knew that they came over there quite small.
Q. But all of them were children and had been born, that is namely, Eliza Campbell, Ida Campbell, William Campbell, Pearly Campbell, that they were all children that were not born on the Omaha reservation?
A. Yes sir.
Q. And that their father was a white man?
A. Yes sir.
Q. And that they were not on the annuity rolls until after they moved up here?
A. Well, as to that I do not know.
Q. Well, now then, take the children of Swan Olsen, do you know whether they were born on the reservation or not?
A. I know that the girl was born on the reservation.
Q. The other one was born on a farm down in Cuming county, was it not?
A. Yes sir.
Q. Then as a matter of fact the hurried questions which Mr. Webster put to you, show in some instances as you have stated in answer to my questions, that there are exceptions then from the general answer to his questions?
A. Practically the bulk of them were born upon the reservation.
208 Q. The larger part?
A. Yes sir.
Q. But there are exceptions that were not, those that have been mentioned?
A. Excepting those that have been mentioned.

Q. Now, do you know where the children of Josephine Von Felden were born?

A. I do not.

Q. Is it not a fact that she has two or three children that were born away from this reservation? The last annuity roll shows three children? Guy, Garry and Roy?

A. It strikes me that the two oldest ones were born on the reservation.

Q. And how about the other?

A. I do not know that they had not been.

Q. You know that they were absent from the reservation three or four years?

A. Yes sir.

Q. In regard to the child of the youngest child of Lizzie Wickersham?

A. If they had a young child, I did not know it.

Q. If there has been a child born to the Wickershams within the past two years, it has been born on the Indian reservation?

A. Yes sir.

Q. And the father is a white man?

A. Yes sir.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

209 CHARLES P. MATHEWSON, a witness, produced on behalf of the complainants, being first duly sworn, deposes and says, as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. How long have you been familiar with the official business and customs of the Omaha tribe of Indians?

A. Twelve years.

Q. During the past twelve years what has been the custom in regard to the enrollment of those children born of Indian women of full blood, or part Indian blood being issued by white men?

A. They have been placed upon the rolls.

Q. Upon what representation, to you, or through agents during that period of time?

A. The same as other members of the tribe, the information is given to us generally when we are taking a census for the purpose of making annuity payment, the council is present, and it is reported that there has been a birth in the family, the name is given and then placed on the roll.

Q. For instance where mixed blood Indian women, like Mrs. Von Felden, whose husband is a white man, residing in Wisconsin, what

notice do you require of her for the enrollment of her children where they were born?

A. In her case; in one instance in my mind, she has written us giving the name and date and birth of the child. I think her brother has confirmed the statement orally, informed me of the birth.

210 Q. Has the right of such children, when born been recognized as a right under the general usages and customs of the Omaha tribe during the past twelve years?

A. I think it has.

Q. Do you know?

A. So far as my knowledge, it has. I have not been there all the time in the twelve years, but so far as I know that is the case.

Q. During the eight years of your actual experience that has been the custom, has it?

A. It has.

Q. Has it at any time been required that such enrollments be submitted to the Commissioner of Indian Affairs for approval before the payment of annuity money?

A. It is not. It has not.

Q. Has there ever been any objection made to the enrollment of children of mixed blood — Omaha Indian women because of the fact that the father was a white man and not a member of the tribe?

A. Not to my knowledge.

Q. If such objection had been made during the eight years of which you were actively in charge of the work, would you have known it.

A. I think I should.

Q. Were there a number of such children enrolled during the time that you had charge of that work?

A. There was.

Q. Does the fact of whether or not such child or children had been off the reservation make any difference in regard to their enrollment?

211 A. No.

Cross examination

Questions by Mr. JOHN L. WEBSTER:

Q. The case you refer to, or rather the cases you refer to are where one of the parents was a recognized member of the tribe?

A. Yes sir.

Q. You never enroll an Indian child unless one of the parents is a recognized member of the tribe, do you?

A. No sir, we do not.

Q. Where the tribal relation has been disputed as to both parents such enrollment is never made?

A. It is not.

Q. And under that rule you speak of you could not enroll any of the children of any of the plaintiffs in these suits?

A. No, sir.

Questions by Mr. SLOAN:

Q. Why not?

A. We have no authority to place them on the roll.

Q. Weren't you directed by the Commissioner not to enroll any of the allotments, or any of the descendants?

A. There was something of the kind in the Ashley administration, but I cannot recall just what it was. I think there was some communication of that kind.

Q. And that was the basis of the order as you have carried — into effect since, has it not?

A. Not only in this case but any—we have no authority to place any one on the roll whether we have allotments or not without authority from the Commissioner except from those in families that are on the rolls.

212 Q. Where some one of the parents are?

A. Yes sir. We have no authority to place anyone on the roll except from those in families that are on the rolls.

Q. You have however in your capacity as agent received authority from the Commissioner of Indian Affairs to enroll persons who have removed to the reservation and have been off the rolls for some time, have you not?

A. I think so in the case of the Winnebagos.

By Mr. WEBSTER:

Q. You never received any such instruction with reference to the Omahas?

A. I think there has been no case of that kind.

Q. So that during the 12 years of your knowledge of the Omaha tribe, no child has ever been enrolled unless the parents were recognized members of the tribe?

A. One member—one of the parents was a recognized member of the tribe?

Q. The mere fact that the child had Indian blood in its veins would not entitle it to go on the rolls?

A. Not on any authority that the agent would have.

Q. And you have never known a case have you, where a child even though it had Indian blood in its veins was enrolled, unless the parents, one or the other, were recognized members of the tribe?

A. Not when I have been acting in any official capacity there.

Q. You know of no custom or usage by which a child under such circumstances could be enrolled unless that child was adopted into the tribe and the adoption was approved by the Commissioner?

A. No, I do not.

213 Q. You do know, do you not, that where there is a question as to whether a person is a member of the tribe or not, that

that question must be submitted to the approval of the Commissioner of Indian Affairs?

A. That is correct.

Q. The agent would not have any right to decide that question and admit a person into the tribe, or recognize the admission of the person into the tribe without the matter first being submitted to the Commissioner of Indian Affairs and having his approval?

A. That is as I understand it.

Witness excused.

By consent of the parties here, the signature of the witness to the above deposition is hereby waived.

214 EMILY CAMPBELL, a witness, produced in behalf of the complainants, being first duly sworn, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. You knew Mrs. Teresa Fuller, did you?

A. Yes sir.

Q. What degree of Indian blood was she, if you know?

A. I think she was a quarter.

Q. Was her husband a white man or an Indian?

A. A white man.

Q. Did she have an allotment of land on the Nemaha reservation?

A. Yes sir.

Q. Did she make her home there?

A. Yes sir.

Mr. WEBSTER: The defendants object to the testimony relating to the Fullers, for the reason that they are not parties plaintiff in any of the present suits.

Q. Did Teresa Fuller and her family ever have a residence or home on the present Omaha reservation?

A. I do not think they did.

Q. When they removed from the Nemaha reservation where did they go?

A. What?

Q. I say when they removed from the Nemaha reservation where did they go?

A. They went down to the Osages.

Q. In Indian Territory?

215 A. Yes sir.

Q. She has an allotment on this reservation?

A. Yes sir.

Q. And has never lived on it?

A. No sir.

Cross-examination waived.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

216 I do hereby certify that the above named witnesses, Stephen J. Snyder, Anna Cabana, Mrs. Artemesia Frost, Antoine Cabana, William F. Springer, Charles P. Mathewson and Emily Campbell were first duly sworn to testify the truth, the whole truth and nothing but the truth, that their depositions were reduced to writing in the presence of the witnesses respectively, and by me type-written, and that their signatures to said depositions were waived. That said depositions were taken pursuant to the agreement of parties at Pender, Nebraska, on the 22nd day of August, 1902, that both complainants and defendants were present by counsel at the taking of said depositions.

WM. S. HELLER,
Notary Public.

My fees:

Swearing 8 witnesses	.80
184 folios at 20c	36.80
	$37.60

Paid by counsel for pl'ffs.
WM. S. HELLER.

Endorsed: Filed Sep. 3 1902, Geo. H. Thummel, clerk.

217 Thereupon afterwards, to-wit: on the 15th day of September, 1902, correspondence was filed in said case, which said correspondence is in words and figures following, to-wit:

DEPARTMENT OF THE INTERIOR, J. F. A.
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *July* 19, 1901.

I, W. A. Jones, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are copies of the originals as the same appear on file or of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.] W. A. JONES,
Commissioner.

218 (1 Encl.)

14153–1883. UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY, *July* 28″, 1883.

Hon. H. Price, Comm'r of Indian Affairs.

SIR: I have the honor to submit the following typical case, and ask the approval of my decision:

Euphrasia Peters is the oldest of 7 children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis. Euphrasia, some 25 years ago married Mr. Peters, a white man by whom she had several children.

All the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to 80 acres and this is now mortgaged. After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter and did service at St. Louis and on the Mississippi river for the Government during the late war. He has excellent credentials as to character, and so has his wife.

According to the letter from the Secretary of the Interior dated June 1st, 1883, and enclosed in one from the Indian Bureau, I am instructed to carry out the allotments as "the law directs."

After a careful consideration of just what that may mean, I have concluded that it means in accordance with art. 4 of the
219 treaty of 1865, of which the act of August 7, 1882, is supplementary. Art. 4 of the treaty of 1866, defines those entitled to lands to be "the members of the tribe including their half or mixed blood relatives now residing with them." This art. therefore excludes all of the class of Euphrasia Peters, from sharing in the present division of the land, moreover, the Indians through their counselmen inclined to insist upon a strict construction of this art. 4. Since my arrival a full counsel has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere at which Mrs. Peters and her sister were present, and the voice of the counselmen and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers and for members of the tribe living here. This objection is a serious one and I know it to be well taken by my personal field observations.

The Omahas cannot afford to give these outsiders of their best land.

Therefore, in view of art. 4 of the treaty of 1866, and of the unanimous wish of the tribe expressed in open counsel, I decide that Mrs. Ephrasia Peters, is not entitled to an allotment of land on the Omaha reserve.

Very respectfully,

A. C. FLETCHER,
Special U. S. Ind. Agent.

"A"
14153, 83.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *August* 9, 1883.

Miss Alice C. Fletcher, special agent for the Interior Department, Omaha and Winnebago agency, Nebraska.

220 SIR: In reply to your letter of 28th ultimo, you are advised that your decision to the effect that Mrs. Euphrasia Peters is not entitled to an allotment of land on the Omaha reserve, is approved by me in view of your statements.

Respectfully,

H. PRICE,
Commissioner.

W. S. S.

16623–1883.

UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY, *Sept.* 4, 1883.

Hon. H. Price, Comm'r of Indian Affairs.

SIR: Your letter of July 30 marked L. 13664–83, in reference to the claim of Celestia Kuhn, to an allotment of land on the Omaha reserve, and enclosing copy of her letter to Judge Dundy of Omaha, Neb. craving his influence with the department, in her behalf, is received.

The facts of the case are as follows:

Celestia Kuhn is one of the seven living children of Antoine Barada, an Omaha half-breed. She was born of a white mother, (French) in St. Louis and has lived all her life away from the Omaha tribe. She has at the present time land on the Nemaha half-breed reserve. This last spring she came to the Omaha reserve with her husband, a white man, and their children to claim relationship with the Omaha Indians and to secure, if possible, allotments of land.

221 According to the letter of instructions received from the department, under date of June 1st, enclosing a letter from the Secretary of the Interior, directing me to allot the land as "the law directs," and that law being art. 4, of the treaty of 1866, of which the bill approved Aug. 7" 1882, is supplementary, and art. 4, distinctly stating that only the mixed bloods residing at the time with the Omahas shall be entitled to allotments of land, and as neither Antoine Barada or any of his children, including Celestia Kuhn, were at the time living with the Omahas, but residing on lands they had received by virtue of their mixed blood, on the Nemaha half-breed reserve, I submit the following decision for approval:

That Celestia Kuhn, daughter of Antoine Barada, is not entitled to an allotment of land on the Omaha reserve.

In this connection, I would call attention to my letter to the department under date of July 28", stating the case of Eu-

phrasia Peters, sister to Celestia Kuhn, and to your reply "A. 14153–83, Aug. 9, containing your decision in that case.

Very respectfully, A. C. FLETCHER,
Special U. S. Ind. Agent.

WINNEBAGO IND. AGENCY, NEBR., *Aug.* 28, 1883.

Maj. Larrabee.

DEAR SIR: Your kind letter came duly & was welcome. Thanks for the interest & care you take in my work. I hope that it will be successful & I think it will. The Indians are learning a great deal, and they are gaining in larger ideas of life and duty.

There were two important letters that reached Washington just after you had left. I wish you would acquaint yourself with
222 their contents. They were typical & test cases. One of Euphrasia Peters, & one, John Provost. Mrs. Peters belongs to a set of mixed bloods who have lands in Nemaha, Richardson Co. Nebr. and have come up here on a land speculation. She is the daughter of Antoine Barada a half-breed by a white woman (French). His children were born & raised away from the Omahas and only claimed relationship to draw money, years ago—& when that ceased to be issued no more was heard of them until the present bill was in existence. These people are only the forerunners of swarms of people who have no right here at all.

You will see my letters. The Commissioner has approved my decisions—there is however one thing I would like for my own safety, & that is the confirmation of his approval by the Sec'y of the Interior, for this reason—the Kuhns, Mrs. Kuhn is sister to Mrs. Peters, (the men are white men) are trying to use political influence to get in on this reserve. They have got Judge Dundy to write a letter in their behalf and what is more, in spite of my direct order, enforced by the agent, they have selected their allotment, built a house & declare they will stay "anyhow." Now it is because of these people, who defy authority, who have no claim whatever to the land, who are doing harm daily to the Indians by their actions—that I would like the confirmation of the Hon. Commissioner's decision by the Sec'y.—The Indians in a large open council forbade these people to stay, & according to law they have no possible right here. I will send on the Kuhn case in a few days. What shall I do about it? Will you explain it to the Commissioner? If these people work up some political influence & succeed in getting the Sec'y's consent, it will do great harm to the Indians here. The Omahas cling to the art. 4 of their treaty & will not consent to these intruders remaining.

223 I know you will be sorry to hear that the great exposures of camping in the terrible weather of the past summer have brought on an attack of inflammatory rheumatism & all my vacation has been spent in bed—I write lying down so you will excuse—

I hope soon to get on crutches. This is my first & I hope last attack. I've lost over 30 lbs. the Dr. says.

Give my cordial greeting to the Hon. Com'r to Miss Cook & the others of the office, & believe me,

Gratefully & sincerely y'rs, A. C. FLETCHER.

L. 16623–1883.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Sept. 13th*, 1883.

Miss A. C. Fletcher, U. S. special agent, Omaha and Winnebago agency, Nebraska.

MDLLE.: I am in receipt of your report dated September 4, made in compliance with office instructions of July 30, last, relative to the claim of Celestia Kuhn (*née* Barada) to an allotment of land on the Omaha reservation, under the provisions of the act of Congress approved August 7, 1882, (22 Stats., 341).

After reciting the facts in the case, you express the opinion that the said Celestia Kuhn is not entitled to an allotment and you ask that your decision in the case be approved.

It appears that the applicant is one of seven living children of Antoine Barada, an Omaha half-breed; that she was born of a
224 white mother (French) in St. Louis, Mo. and has lived all her life away from the Omahas, until last spring when she appeared on the reservation, with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which the allotments to the Omahas are being made relates to the treaty of March 6, 1865, (14 Stat. 667), which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned "to members of the tribe, including their half or mixed blood relatives *now residing with them*."

I find in the files of this office, a schedule, duly certified by the chiefs of the Omaha tribe, showing the names of those who were properly entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections. Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the Superintendent of Indian Affairs, and having been submitted to the department by this office January 21, 1871, was approved by the Secretary of the Interior,—January 26, 1871.

Neither the name of Antoine Barada, (the father) nor that of the applicant Celestia Kuhn, formerly Barada, appears on said schedule and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant was not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled

now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty, or more
225 recent act of Congress under which the allotments are being made, were intended as a general invitation to all persons everywhere, who by hook or crook might be able to prove the existence of a drop or two of Omaha blood in their veins, to come forward and receive an allotment, manifestly, such was not the intention, for it is not at all likely that there would be land enough on the entire reservation to go around in that way. Besides, the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians.

Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation.

Very respectfully, H. PRICE,
Commissioner.

LARRABEE.

18001–1883. UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY, *September* 25, 1883.

Hon. H. Price, Comm'r of Indian Affairs.

SIR: I am in receipt of your letter dated September 13" No. 16623–83 relative to Celestia Kuhn.

The Kuhn family are disposed to test their rights here.

Although they had been told by the agent and myself that they could not select land and enter upon it until word had been received from the department as to their application for allotments, they have settled upon claims, built a house and propose to
226 remain. They depend upon political influence to push their claim.

According to the treaty which is the law governing these allotments the Kuhn family have no right here, the whole matter is set forth in my letter of the 4th inst. and in the answer received from the department confirming my decision.

In view of the situation and to forestall and preclude any further trouble and contention I would respectfully ask the Hon. Commissioner if it would be possible to have his decision contained in letter No. 16623, dated September 13", 1883, confirmed by the Secretary of the Interior, that there may be no possible appeal left these people who are breeding much trouble among the Indians.

The tribe are unanimous against these mixed bloods remaining on the reservation. A council was held today in which the council-

men urged the Government to free them at once from these people who are trying to "eat up the land."

Very respectfully,

A. C. FLETCHER,
Special U. S. Ind. Agent.

L.
18001–1883.

DEPARTMENT OF THE INTERIOR, C. A. M.
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *October 5th*, 1883.

Miss A. C. Fletcher, U. S. special agent, Omaha and Winnebago agency, Nebraska.

MADAM: Referring to your letter of the 25th ultimo, regarding the Kuhn family, who declare to you their intention to
227 remain on the reservation and test their rights, in defiance of the authority of this office, I have to say that I have by letter of this date directed Agent Wilkinson to take immediate steps to remove said family beyond the limits of the reservation.

A copy of my letter to Agent Wilkinson is enclosed, herewith, for your more complete information.

Very respectfully,

H. PRICE,
Commissioner.

LARRABEE.

L.
16623–1883.
18001– "

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *October 5th*, 1883.

Geo. W. Wilkinson, Esq., U. S. Indian agent, Omaha and Winnebago agency, Nebraska.

SIR: Miss A. C. Fletcher, U. S. special agent, reports to this office, under date of September 25, 1883, that a family by the name of Kuhn have taken up lands and built a house on the Omaha reservation, announcing their intention to remain there in defiance of the recent decision and directions of this office in their case.

It appears that this family removed to the reservation, in the spring of the present year, with a view to securing an allotment of land under the provisions of section 5 of the act of August 7, 1882, (22 Stat. 341) by virtue of the relationship they claim to the Omaha Indians.

228 The facts of the case as reported by Miss Fletcher in letter of September 4th last, are substantially as follows:

Celestia Kuhn is one of seven living children of Antoine Barada, an Omaha half-breed, she was born of a white mother (French) in St. Louis, and has never lived with the Omaha tribe. She has a white husband, and children who accompanied her to the reservation on her removal there in the spring. Neither Antoine Barada (her father) nor any of his children were living with the Omahas at the date of the treaty of 1865. (14 Stat., 667) but were living

upon lands secured to them by the provisions of a former treaty article X treaty July 15, 1830. Stat. vol. 7 p. 330.

Accordingly Miss Fletcher decided that Celestia Kuhn was not entitled to an allotment and asked for the approval of her decision by this office.

By letter of Sept. 13, 1883, Miss Fletcher was advised that her decision was approved, and at the same time directed to notify Mrs. Kuhn and family to remove from the reservation.

That the law under which the allotments to the Omahas are being made relates to the treaty of March 6, 1865, there can be no question. That treaty provides that lands in severalty shall be assigned "to members of the tribe, including their half or mixed "blood relatives *now residing with them.*" I believe it is not contended and it seems perfectly clear that the present claimant was not living with the tribe at the date of said treaty. Manifestly then she was not a beneficiary under said treaty in respect of the allotments therein provided; for only those half or mixed blood relatives *then residing* with them could be so entitled.

The Omahas had already by a former treaty (July 15, 1830) provided for such of their half-breed brethren as were not residing with them at the date of the treaty aforesaid, and it was
229 undoubtedly by reason of such prior beneficial provision that the restriction was made in the treaty of 1865, limiting the allotments to "the half or mixed bloods relatives *then residing with them.*"

This very Barada family has thus been provided for, and I find that 320 acres of land were allotted and patented to Celestine Barada, individually, within the Nemaha half-breed reserve, where it appears she and her father were living when the treaty of 1865 was concluded.

In the records of this office there is a schedule duly certified by the chiefs of the Omaha tribe, showing the names of those who were properly entitled to selections of land under the treaty of 1865 aforesaid.

Neither the name of Antoine Barada (the father) nor that of Celestia Barada, or Kuhn, appears thereon, and it is proper to conclude that they were not recognized either as members of the tribe or half or mixed blood relatives residing with them. If Mrs. Kuhn was not entitled to an allotment then, she certainly is not entitled now. The conditions remain the same. She has in no manner been identified with the tribe since that time; has not been adopted into the tribe, nor lived with them until the very recent period spoken of.

As was remarked to Miss Fletcher, it would be absurd to contend that the treaty of 1865 or the more recent act of Congress under which the allotments are being made, were intended as a general invitation to all persons, everywhere, who might be able to prove the existence of a drop or more of Omaha blood in their veins, to repair to the reservation and select an allotment. Manifestly such was not

the intention, nor will any such construction be admitted in making the allotments.

230 It is not at all likely in the first place, that there would be land enough on the entire reservation to go around in that way, and it is clear from the recent action of the Indians in forbidding Mrs. Kuhn to remain on the reservation, that the Indians would never have consented to any such disposition of their lands, and the language of the act shows that it was not the intention of Congress to do anything contrary to the wishes of the Indians.

It appears from Miss Fletcher's report of the 25th September, to which reference has been made, that the Omahas are unanimously opposed to permitting Mrs. Kuhn and family to remain on the reservation, and that their presence there is breeding trouble. In a council held on the above date they urged that the Government take steps to relive them of the burden of these people.

In view of the decision made in their case by Miss Fletcher and approved by this office, and holding that they have no right to remain on the reservation, I have to direct that you take immediate steps to remove them beyond the limits of the reservation, using your police force for that purpose if it shall be found necessary.

Very respectfully, H. PRICE,
Commissioner.

LARRABEE.

8064–1888. OMAHA AGENCY, NEB., *March 19th*, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short we could not tell you all about intruders on our tribal land. There is a man named Frank Peters who although he has Omaha blood in him

231 is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1866 from taking land on this reservation. Our land was allotted and patented to us under the rules of this treaty, we were told. We knew that this Peters family tried to take land when our reservation was allotted to us four years ago, and that they had a chance to state their case, and the tribe told their side, and that the case was sent on to Washington and was decided according to our treaty and the Peters family had to go away. They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24 range 8 and broke forty acres. We told him to stop and go away. He laughed at us and said he would not go until the Government should come and take him off. We have asked to have him sent away but nothing has been done. This winter other members of this family and their relations have come up and they say if Frank Peters stays they will break land and stay here too. We have asked people who know the law what

we should do to save our land. We were told to tell you all about the case, and that you will get the courts to take the intruders off our land. The law under which our land was allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe shall be held just as safe as our individual land. If this man Peters or any other person is permitted to settle on tribal land and the Government does not by its law take the man away, we can not feel sure that our own farms will be kept safe, for the promise is the same for our individual and our tribal land. The law says that our children born during the twenty-five years, shall have their allotments on the tribal land. These intruders have selected some of the best of our unallotted land.

232 Some of the tribe did not listen to good advice when our reservation was allotted, they thought they could not live away from the timber, out on the prairie but they see their mistake now, their farms are poor and they want to take land for their young children out on the prairie and farm there, but these intruders are keeping us off good land.

We respectfully ask that you take action to remove all intruders from our tribal land. Frank Peters will soon put in his crops and we do not want him allowed to do so. If this man is permitted to stay, there are a hundred who will make the same claim, and we be defrauded of our property.

Respectfully,

TWO CROW, his x mark.
GEORGE MARTIN.
SIN DA HA HA, his x mark.
DUBAMATHE, his x mark.
MA THA WA THA, his x mark.
WA JA PA, his x mark.
ME HA TUN, his x mark.
FREDERICK MERRICK.
INSTA THA BE, his x mark.
GILBERT MORRIS.
JOSEPH MERRICK.
WALTER MORRIS.
SCHUYLER WELLS.
NUGA ZHINGA, his x mark.
URIAH MERRICK.
CHARLES ROBINSON.
RICHARD WHITE.

8064–1888. SAMUEL IRVIN, his x mark.
GEORGE GRANT, his x mark.

233 OU NA MA THEE, his x mark.
DAVID MORRIS.
WHITE HORSE, his x mark.
CHAZAH THINGA, his x mark.
WA NE TAWAKHA, his x mark.
SETH A DA ZHINGA, his mark.

OU-KE-PATUN, his x mark.
JAMES DICK, his x mark.
HARRY LYON.
NATHAN LYON.
DAVID WELLS.
HEYTHE KU WINGHE, his x mark.
NEBRASKA, his x mark.
FRANK BLACKBIRD,
HEY SUN THEKE, his x mark.
OUSHUDAMATHEE. his x mark.
MASHEAHMUTHEE, his x mark.
WASHESKA, his x mark.
OUGAHATHE THUN, his x mark.
MANGAAHZHE, his x mark.
HUNGATHE, his x mark.
MUNZADUN, his x mark.
WASA AH PA, his x mark.
WASHINKEDA, his x mark.
SEGUNA-GA, his x mark.
EUGENE PAPAN, his x mark.
ALBERT PAPAN, his x mark.
GANUGAZHINGA, his x mark.
THEKHABAZHE, his x mark.
CHARLIE DICK.
TECUMSEH DICK, his x mark.
234 LOUIS DICK.
TAC AH THEGA, his x mark.
HENRY BLACKBIRD, his x mark.
OUBANE, his x mark.
KEBAKHAHE, his x mark.
SINDEMUHA, his x mark.
BAZUNUGA, his x mark.
MUNAKUGA, his x mark.
EDWARD ESEAU, his x mark.
THE UM BA TEGEDTH, his x mark.
NUMBA MUN THE, his x mark.
ZE-ZE KAZHINGA, his x mark.
PATHEN GA HE GO, his x mark.
OUSKA DAZHE, his x mark.
MATTHEW TYNDALL.

Endorsed: Filed Sep. 15 1902 Geo. H. Thummel, clerk.

235 Thereupon afterwards, to-wit:—on the 15th day of September 1902, correspondence was filed in said case, which said correspondence is in words and figures following, to-wit:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *July* 15, 1901.

I, W. A. Jones, Commissioner of Indian Affairs do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file or of record in this office.

In testimony whereof, I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, on the day and year first above written.

W. A. JONES,
Commissioner.

236 8524–1884. UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY, *April* 26", 1884.

Hon. H. Price, Comm'r Indian Affairs.

SIR: I am in receipt of your letter No. 1370 dated February 21, 1884, referring to me a letter addressed to the Hon. Commissioner by one Mrs. Artemesia F. S. Frost who claims to be an Omaha mixed blood, asking to be advised as to whether her and her children's claims on the Omaha reservation are still good, and for examination and such investigation of the case as I may be able to make.

In reply I have to say that in compliance with the above instructions I gathered what evidence I could pertaining to the case of Mrs. A. F. S. Frost, from both the Omahas and Mr. Frost, the latter representing Mrs. Frost, she being unable to be present at the investigation made in open council of the tribe, but failed to find any evidence to show that Mrs. Frost had lived with the Omahas in the year 1865 or that she was ever formally adopted into the tribe of Omahas and given any right to any of the land although given permission to draw annuities.

The enclosed affidavit of Mr. Frost was read before the open council but could not be corroborated by any of the old councilmen and soldiers through whom the Government transacted business with the tribe at the time mentioned by said Mr. Frost. The fact that Mr. Frost came upon the reservation and did some breaking in the Logan valley is not denied, but from the evidence given me by the Indians he was not invited to come on the reservation to take lands and do breaking thereon as was stated in the evidence given
237 by Mr. Frost. As no record of any kind has been kept of the council spoken of in Mr. Frost's affidavit wherein he says: "The chiefs, then and there instructed Agent Gillingham that my wife and all of her children be placed on the roll as members of the Omaha tribe of Indians, with all the rights and all the privileges belonging to members of the tribe. That I should select the claims for my wife and children out of any land that was not

taken;" and as neither the ex-U. S. interpreter Mr. Saunsoci, nor the old chiefs and soldiers could substantiate the above statement, I could obtain no official or other evidence to prove Mr. Frost's assertion.

In view of the evidence I would respectfully request that my decision that Mrs. Frost is not entitled to an allotment of land under the act of August 7, 1882 be approved.

Very respectfully,

A. C. FLETCHER,
Special U. S. Indian Agent.

238 8525–1884. UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY, *April* 28, 1884.

Hon. H. Price, Comm'r of Indian Affairs.

SIR: I would respectfully submit the following decision in the case of Mrs. Margaret Sloan for approval.

Margaret Sloan is the daughter of a full blood Omaha woman and Michel Barada, a white man. She was born at Fort Calhoun, Nebraska, and taken early in life to St. Louis, Mo., to be educated, where she married Thomas Sloan a white man and afterward lived in St. Louis, Mo.; and upon her allotment of land given her as a half-breed Omaha in the Nemaha reservation. During her youth and early married life she made a few visits to her relatives living with the Omaha tribe. In 1857, Thomas Sloan was appointed to take charge of the mill then being built on the Omaha reservation and removed thither with his wife Margaret and their three children, William 19 years, John 11 years and Artemesia (now Mrs. Frost) 4 years of age. Mr. Sloan remained at the mill in the Government employ for two or three years. This period constitutes the only residence of Mrs. Sloan upon the Omaha reservation up to 1881, when she returned here with her grandson Thomas Sloan, the only child of her deceased son William who entered upon land and has made considerable improvements on his claim.

Mrs. Sloan claims a right to an allotment under the act of August 7, 1882, as she states that her husband, Thomas Sloan went into the army after he left the mill on the Omaha reservation and was in the army in the year 1865 and that as he entered the army from
239 this place his residence was the Omaha reservation and her constructive residence was that of her husband's.

Her claims have been fully investigated in an open council of the tribe and I have waited two months for further evidence promised by Mrs. Sloan tending to establish her husband's entrance into the army from the reservation but feel it now to be my duty to no longer delay action in her case.

According to the evidence given by the Indians Thomas Sloan and his family left the reserve in 1860, and according to all I can learn, his point of departure into the army can have no bearing on her case. By her own statement and the testimony of other persons, Mrs.

Sloan was not living with the Omahas at the time of the treaty of 1865, but upon her land on the Nemaha reserve, nor do the tribe in any way admit her claim to land here.

Therefore in view of all the evidence I have been able to gather I am constrained to decide that neither Mrs. Margaret Sloan nor her descendants are legally entitled to allotments of land upon the Omaha reservation under the act of August 7, 1882.

I enclose the sworn statement of Thomas Sloan as to his whereabouts in 1865 which is the only written evidence furnished me by Mrs. Sloan.

Very respectfully,

A. C. FLETCHER,
Special U. S. Indian Agent.

240 8726–1884. UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY, *April* 28, 1884.

Hon. H. Price, Comm'r of Indian Affairs.

SIR: By an oversight the enclosed papers intended to be sent together with the letters dated 26″ and 28″ inst were omitted.

The affidavit marked "A" was intended to go with the letter dated April 26, relative to the claims of Mrs. Artemesia F. S. Frost, and the one marked "B" was intended to go with the letter dated April 28″, relative to the claims of Mrs. Margaret Sloan.

The letter of Mrs. Artemesia F. S. Frost which was referred to me by office letter No. 1370, dated Feb. 21, 1884, is also herewith returned.

Very respectfully,

A. C. FLETCHER,
Special U. S. Ind. Agent.

241 B.

8726–1884.

STATE OF NEW JERSEY, } *ss:*
Burlington County, }

Thomas Sloan of full age being duly sworn on his oath, — that he is at this time a resident of the city of Burlington, in the county and State aforesaid.

That he served on board the steamer "Gol-en Era" during the year 1865, in the capacity of engineer. That said steamer was commanded by Capt. Johnson and was attached to the quarter master's department of the United States Army,"

That said steamer plied on the waters of the Mississippi, White river, Arkansas and Red rivers.

That he was discharged at New Orleans, in August, 1865.

THOMAS SLOAN.

Sworn & subscribed before me at Burlington N. J. Mar. 28th, 1884.

HOWARD FLANDERS,
A Master of the Court of Chancery of New Jersey.

242 8781–1884. UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY, *May* 2, 1884.

Hon. H. Price, Comm'r of Indian Affairs.

SIR: The enclosed statement of Mrs. Margaret Sloan, which I had the honor to submit under date of April 28, 1884.

Upon consideration of her statement, I find in it no new facts bearing upon her claim to receive an allotment. Her explanation of her absence from the tribe in the year 1865, being caused by her husband's placing her elsewhere to live during his employment in the U. S. service does not alter the fact that she was not here and consequently cut off from the provision of art. 4 in the treaty of March 6, 1865 concerning mixed-blood relatives to which treaty the act of Congress of August 7, 1882, refers back.

Very respectfully,

——— ———,
Special U. S. Ind. Agent.

243 8781–1884.

This is to certify that I was born among the Omaha Indians, on their lands near Calhoun, Nebraska of an Indian woman a sister of one of the chiefs of the Omaha tribe of Indians, Nois by name and it has been acknowledged by the Indians in open council at the Omaha agency the 24th day of March, 1884.

I have lived with the Omahas at Bellevue, Nebraska for a year or more and was there when they moved north. From 1857 until 1860 or 1861 my husband was employed at the Omaha mill as engineer with my oldest son as assistant during this time I was living with my family on the reservation.

About 1860 or 1861 my husband determine- to move to the southern part of the State so as to give his children the advantage of schooling, and provide for his family during his absence as he intended going into the U. S. service.

During the winter of 1862 and 1863 I was living on the reserve looking after the interests of myself and children, and left the reserve with the intention of coming back, on getting back to my family I found that my husband had made arrangements for going in the United States service and it was necessary for me to remain there, my husband went to St. Louis Mo., and was employed on the U. S. gun boats setting machinery and on vessels in the U. S. service as engineer during 1863, 1864, 1865.

During a portion of the years 1863 and 1864 while my husband was away in the U. S. service my son John was living on the reserve looking after the safety of property belonging to the family on the reserve at that time on his return he was sent to school in Philadelphia, Penn., and was at school during the year 1865.

244 During the absence of my husband most all of my property was stolen from me, horses, cattle, sheep, hog, farming

implements and grain and I do declare that I have regarded the Omaha reserve as my home and being away particularly during 1865 was caused by circumstances beyond my control. The above is a true and correct statement to the best of my recollection and belief.

her
MARGARET SLOAN. x
mark.

THE STATE OF NEBRASKA, } ss:
Cuming County, }

On this 28" day of April, A. D. 1884 before me a notary public duly appointed and qualified for and residing in said county personally came Mrs. Margaret Sloan to me known to be the identical person whose name is affixed to the foregoing statement and acknowledged the instrument to be her voluntary act and deed for the purpose of establishing her identity.

Witness my hand and seal the day and year last above written.

[Notarial Seal G. H. Ransom, Cuming County, Nebraska.]

G. H. RANSOM,
Notary Public.

245 L. DEPARTMENT OF THE INTERIOR, C. A. M.
8525–1884. OFFICE OF INDIAN AFFAIRS, *May 9th*, 1884.

Miss A. C. Fletcher, U. S. special agent, Omaha and Winnebago agency, Nebraska.

MDLLE.: Referring to your letter of April 28, 1884, asking that your decision in the case of Mrs. Margaret Sloan, applicant for an allotment of land on the Omaha reservation, under the act of August 7, 1882, be approved, I have to say that I concur in the views expressed in your letter, and therefore approve your decision "that neither Mrs. Margaret Sloan nor her descendants are legally entitled to allotments of land upon the Omaha reservation under the act of August 7, 1882."

Very respectfully,

H. PRICE,
Commissioner.

LARRABEE.

246

L. DEPARTMENT OF THE INTERIOR, J. F. A.
8064–1888. OFFICE OF INDIAN AFFAIRS, E. S. W.
WASHINGTON, *November* 14, 1888.

To the honorable the Secretary of the Interior.

SIR: I have the honor to submit the following quoted petition from Indians of the Omaha reservation, in Nebraska, relative to one

Frank Peters, with a statement of the action heretofore taken by this office in similar cases:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty we were told.

We knew that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

247 They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away; but nothing has been done.

This winter other members of the family and their relations have come up, and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted land.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber,
248 out on the prairie; but they see their mistake now. Their farms are poor and they want to take land for their young

children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop and we do not want him to be allowed to do so.

If this man is permitted to stay a hundred others will make the same claim, and we will be defrauded of our property."

The foregoing petition is signed by 65 Indians of the Omaha reservation.

The allotment of land on the Omaha reservation was made under the provisions of the act of Congress approved August 7, 1882 (22 Stat. 341); and the said act expressly stipulates and provides that the said allotments "shall be deemed and held to be in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for whom, for the most part certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided."

The fourth article of the treaty of March 6, 1865, therein referred to (Stat. 14, 668) extended the benefits conferred thereby, in respect to allotments, to such only of their half or mixed relatives as were *residing with them* at the date of the treaty, the language of the said article being "including their half or mixed blood relatives now residing with them."

It will be observed that the Indians of the Omaha reser-
249 vation in their complaint to this office, charge that Frank Peters is not entitled to land on their reservation; that they admit that he has Omaha blood in his veins being of the mixed blood families who were provided with land by them on the Nemaha reservation; that the mixed bloods were excluded by the Omahas in their treaty of 1865, from taking lands on their reservation; that the Peters family tried four years ago when allotments were being made to the Omahas, to obtain allotments; that they, the Peters family, and other mixed bloods, were denied the right to allotments by the Omahas, and they ask for the removal of Frank Peters from their reservation.

It may be remarked here that as soon as the law became known, (I refer to the act of August 7, 1882, providing for the sale of a portion of the Omaha reservation, and the allotments of lands in severalty to the members of the tribe), a number of mixed bloods from the old Nemaha reservation, came to the Omaha reservation in the hope of securing allotments under the new law.

Some of them were not born among the Omahas and none of them had been with the tribe for years—some 10 and others 20 or 30 years.

The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution

of the land, and from time to time individual cases were reported to this office by the special agent charged with the work of allotting the lands, for decision as to the right of the parties to receive allotments.

As showing the position taken by this office in deciding the cases of these absentee half, or mixed bloods, the following is quoted
250 from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother (French) in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865 (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to the members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office, January 21, 1871, was approved by the Secretary of the Interior, January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

251 If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons everywhere, who by hook or crook, might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around in that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians.

Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the half or mixed blood members of the Omaha tribe not admitted to their reservation by their consent, and not residing with them at the date of the treaty of March 6, 1865, I refer to the case of Mrs. Euphrasia Peters and the action of this office thereon.

252 The last mentioned case was reported to this office by Miss Fletcher under date July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman, and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she has several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to 80 acres, and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister, Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character and so has his wife.

Article 4 of the treaty of 1865 defines those entitled to lands to be "the members of the tribe including their half-breed or mixed-blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover the Indians through their councilmen incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere,

253 at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living here.

This objection is a serious one, and I know it to be well taken by many persons' field observations.

The Omahas cannot afford to give these outsiders of their best lands."

In pursuance of article 4 of the treaty of March 6, 1865, and the una-imous wish of the Indians in open council, Miss Fletcher decided that Mrs. Euphrasia Peters was not entitled to an allotment of land on the Omaha reservation.

By letter of August 9, 1883, Miss Fletcher was advised that her decision in the case of Mrs. Euphrasia Peters was approved by this office.

From the foregoing, it will be observed that under the construction placed upon the act of August 7, 1882, by this office, none but members of the tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

The party, Frank Peters, against whom complaint is made, is a mixed blood Omaha. He is not adopted by the tribe on the Omaha reservation; he was not residing with them when the treaty of March 6, 1865 was made; his name is not borne upon the duly cer-
254 tified roll of 1871, submitted by the Omaha council, disclosing the names of all Indians or mixed bloods entitled to lands on the Omaha reservation.

It would appear, therefore, that the said Peters is not entitled to allotment of lands on the Omaha reservation, under the treaty of March 6, 1865, and the provisions of the act of Congress of August 7, 1882, and is upon the reservation without authority.

It will be observed from the foregoing that this office as well as the Omaha tribe, takes the ground that none of the half breeds or mixed blood Omahas, living at the date of the treaty of 1865, who were not residing with the Omahas at that time, nor the descendants of such, are entitled to allotments on the Omaha reservation by reason of their relationship to the Omahas.

It appears from the records of this office, that there were some 70 half-breed Omahas who received patents for lands on the Great Nemaha reservation, and it is very important that the question of their rights or the rights of their descendants to land on the present Omaha reservation be determined.

A decision in the present case will settle the whole question. If you concur in the opinion above expressed, I have the honor to request authority to remove the said Peters and all others of a like class from the reservation.

Very respectfully,

JNO. H. OBERLY,
Commissioner.

(HINTON.)

255 R. V. B. DEPARTMENT OF THE INTERIOR, J. C. C.
Authority 18975. WASHINGTON, *Dec.* 5, 1888.

The Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th instant, upon a petition filed by the Indians of the Omaha reservation, in Nebraska relative to one Frank Peters, whom the petitioners claim belongs to one of the mixed blood families who were provided with land by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now has settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters, though a mixed blood Omaha, is not adopted by the tribe on the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865 (14 Stats. 668) was made, (the 4th article of which extended the benefits conferred thereby in respect to allotments, to such only of their half or mixed blood relatives as were residing with them at the date of the treaty); that his name is not borne upon the duly certified roll of 1871; submitted by the Omaha council, which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation, which was approved by the department January 26, 1871; that upon the passage of the act of August 7, 1882, (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of lands in severalty to the members of the tribe, a
256 number of mixed bloods from the old Nemaha reservation,—and among them the Peters family—came to the Omaha reservation, in the hope of securing allotments under the new law, and that this was denied them, your office holding that under the said act of August 7, 1882, none but members of the tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements, and your finding that the said Frank Peters is not entitled to allotment of lands on the Omaha reservation under the treaty of March 6, 1865, and the provisions of the acts of Congress of August 7th, 1882, and is upon the reservation without authority and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully, WM. F. VILAS, *Secretary.*
D. L. H.

5584, Ind. Dic. '88.

257 W. C. P. 34406. DEPARTMENT OF THE INTERIOR, WASHINGTON, *September* 6, 1894. J. T. B.

Commissioner of Indian Affairs.

SIR: I have received your letter of the 10th of July last, transmitting one from Captain Wm. H. Beck, U. S. A., acting Indian agent at the Omaha and Winnebago agency, Neb., with enclosures of six petitions by Omaha Indians asking that the names of Mrs. Margaret Sloan and Thomas L. Sloan be placed upon the rolls as members of that tribe—these petitions bearing the names of some one hundred and sixty persons, including those of nine of the eleven members of the tribal council. The acting agent states that these petitions were made after due deliberation in several open councils, in which the claims of the Sloans were presented, discussed and decided upon, with the result that the council and many other members of the tribe desire the adoption of the persons named, and that the signers took such action, believing that Thomas L. Sloan would be of benefit to them in the near future, as he would identify himself with the tribe, and from his ability and character, and knowledge of the tribe, be able to aid them in handling their lands. He further adds that the Omahas are divided into factions, and refers to one led by Henry Fontenelle and Silas Wood, ex-interpreter, who obtained a petition many months ago, secretly, and forwarded it to the department, representing that the Omahas did not desire Mr. Sloan to become a member of the tribe, which petition, the agent says, was signed largely without the authority of the signers.

This latter petition contained about 95 names, and anticipated
258 the action of the members of the council and other Indians of the tribe in the matter of adopting the Sloans as members, and embraced a statement or argument against the adoption of the said parties into the tribe—among other things, that about three years ago William L. Sloan, having met with no success before the department with his claim, resorted to the U. S. courts, and the tribe was asked to show cause why Sloan and many other part-blood Omahas, should not share in the annuities and lands of that tribe; that the oldest and best informed Indians of the tribe gave their testimony in that case, which cost the tribe nearly $3,000, with the result that the U. S. court, like the department, decided the case against Sloan and his co-petitioners, and that he is now seeking to gain by adoption into the tribe what he failed to secure before the department and the U. S. court; further, that it is not the wish of the tribe to have Sloan become a member of it, and adds that without stopping to say how many reasons there are why Mr. Sloan should not be admitted, they do say there is no reason for his adoption that could not be given for the adoption of any other white man.

You say that the claims of Mrs. Sloan and Thomas L. Sloan her grandson, to recognition as Omaha Indians and their right to partici-

pate in the use and enjoyment of the tribal properties, have been frequently before your office during the past eleven years, either independently or in connection with the claims of other Omaha half-breed claimants whose status is similar to that of the Sloans, and refer to a report of Miss Alice C. Fletcher, of April 28, 1884, who was then making allotments to the Omahas, in which she stated that Mrs. Sloan (who was the daughter of an Omaha woman and Michael Barada, a white man, and who holds an allotment on the Nemaha reserve as an Omaha half-breed) never lived upon the Omaha reservation until in 1857, when her husband, Thomas Sloan, a white
259 man, was appointed to take charge of the mill then being built on that reservation, where he remained in Government employ for two or three years, which period constitutes her only residence there up to 1881, when she returned thereto with her grandson, Thomas L., the only child of her deceased son William; that Mrs. Sloan and her grandson claimed the right to allotments on the Omaha reserve under the act of August 7, 1882, although section 5 of that act provided that such allotments shall be in lieu of those provided for in the 4th article of the treaty of March 6, 1865, with the Omahas, which said article provided for allotments in severalty to the Omaha Indians, "including their half or mixed blood relations now (then) residing with them;" that the schedule of selections of land in severalty under the said 4th article duly certified by the chiefs of the Omaha tribe, and certified and submitted by their agent to your office on December 30, 1870, which was approved by the department on January 26, 1871, embraces neither the name of Mrs. Sloan nor of her descendants; that her claims were fully investigated in an open council of the tribe and that the tribe does not in any way admit Mrs. Sloan's claim to land, and you say that Miss Fletcher accordingly decided that Mrs. Sloan and her descendants are not legally entitled to allotments under the said act of August 7, 1882, and that her decision was sustained by your office on May 9, 1884.

After reciting other facts in relation to the claims of the persons herein referred to, and the general status of the Omaha half-breed question at this time, and the opinions and decisions of your office and the department in these cases, which opinions and decisions have been uniformly adverse to the mixed-bloods, you state
260 that your office knows of no reason either for changing such decisions or for making an exception of the case now before it, and submit the question of the adoption of Mrs. Margaret Sloan and Thomas L. Sloan as members of the Omaha tribe of Indians, with all the rights and privileges appertaining thereto, for the consideration and decision of the department.

The status of these claimants seems to be that they have failed to establish any rights to recognition as members of the Omaha tribe, and that they now seek to establish such rights through the petitions presented with your letter, which contain the names of certain

members of that tribe, who apparently assent to their adoption, with all the rights and privileges as such members.

Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure separate and distinct from their alleged rights as Omaha Indians by blood, and that such alleged right is not necessarily a test for such adoption, there remains the right to admission by the free will and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seem to be in proper form and to express the desire of a majority of the members of the tribe that the persons in question shall be placed upon the rolls of the tribe, and be admitted to all the rights and privileges of the other members thereof.

Besides the opposing petition heretofore referred to, the department is in receipt of recent information which shows that of the one hundred and fifty-seven persons whose names appear on the six petitions presented with your letter, only seventy now favor the claimants; that eleven others have since assented to their adoption,
making eighty-one in all now favorable; that twenty four of
261 the signatures thereon were not written by the parties whose
names are given, nor was the use of their names authorized by them; that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women—neither of whom have any voice in such matters; that one of the nine members of the council purporting to have signed one of the petitions, did not so sign nor authorize the use of his name, and further, that there are one hundred and eighteen male members of the tribe of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petitions in question, the facts presented seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe that the Sloans be not admitted to membership and it is so ordered.

In reference to that part of your report wherein you state that Thomas L. Sloan has held and improved a tract of land since 1881 or 1882, on the Omaha reservation, it would seem that he is doing so in defiance of any legal authority of occupation.

The enclosures of your letter are returned herewith.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

4948, Ind. Div. '94.
11 enclosures.

262 L. DEPARTMENT OF THE INTERIOR, F. A.
25845–1890. OFFICE OF INDIAN AFFAIRS, E. S. W.
WASHINGTON, *August* 27, 1890.

Robert H. Ashley, Esq., U. S. Indian agent, Omaha & Winnebago agency, Winnebago, Nebraska.

SIR: I herewith enclose a copy of a letter of even date herewith addressed by this office to Rev. Thomas L. Sexton, giving a history of the claim of Mr. F. A. Peters to an allotment of land on the Omaha reservation, the rejection thereof by the department, and of the authority granted by the same for his removal, with others of a like class from the reservation. I also transmit a letter from Rev. Thomas L. Sexton, dated August 19, 1890, and a communication therewith enclosed from Mr. Peters of the 6th instant, asking to be enrolled as a member of the Omaha tribe and transmitting a copy of a communication bearing on the subject from R. W. Furnas, Esq., to Hon. C. H. Van Wyck.

You are instructed to require Mr. Peters and others of a like class to remove from the Omaha reservation. Should they fail to comply within a reasonable time, you will so report to this office giving the names of the parties and stating all facts in connection therewith. If any of the parties occupy individual allotments of other Indians, you will so report giving a description by legal subdivisions of the lands so occupied, with names of the allottees.

You will ascertain and report whether the allegation made by Mr. Peters in his said communication that many others who were given lands on the old Nemaha recervation, now hold allot-
263 ments on the Omaha reserve, is correct, and if so, whether the Omahas consented to their admission to tribal rights.

You will return Mr. Sexton's letter with its enclosures with your report.

Very respectfully, T. J. MORGAN,
Commissioner.

(COOPER.)

L. DEPARTMENT OF THE INTERIOR, F. A.
25845–1890. OFFICE OF INDIAN AFFAIRS, E. S. W.
WASHINGTON, *August* 27, 1890.

Rev. Thomas L. Sexton, Seward, Nebraska.

SIR: I have received your letter of August 19, 1890, transmitting with favorable mention one from Mr. F. A. Peters, dated Omaha agency, Nebraska, the 6th instant, claiming to have rights in the Omaha tribe, and asking to be enrolled as a member thereof, and given an allotment of land, &c., and enclosing a copy of a communication bearing on the subject, from Robert W. Furnas, Esq., to Hon. C. H. Van Wyck.

In reply I have to say, that the allotment of land on the Omaha reservation was made under the provisions of the act of Congress approved August 7, 1882, (22 Stats. 341) which expressly stipulates and provides that such allotments shall be deemed and held to be in lieu of "the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6th, 1865, and for whom for the most part certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs as in said article provided."

264 The fourth article of the treaty referred to (14 Stats. 668) extended the benefits conferred thereby, in respect to allotments, to such only of their half or mixed relatives, as were *residing with them* at the date of the treaty, the language of the article being "including their half or mixed blood relatives now residing with them."

As soon as the act of August 7, 1882, providing for the sale of a portion of the Omaha reservation and the allotments of lands in severalty to the members of the tribe became known a number of mixed bloods from the old Nemaha reservation came to the Omaha reservation in the hope of securing allotments under the new law. The Indians of the Omaha reservation manifested the most determined opposition to such persons being allowed to participate in the distribution of the land. The instructions given by this office to the special agent making allotments on the Omaha reservation, concerning the class of claimants referred to were to the effect that none but members of the Omaha tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865 whose names are borne upon the duly certified census roll of 1871 of the Omahas—which was approved by the department—showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, or the descendants of those so enrolled, and such others as might have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

Under date of March 19, 1888, sixty-five Indians of the Omaha reservation addressed a communication to this office protesting against giving an allotment to Mr. Peters who was alleged to belong to one of the mixed blood families, provided with land

265 on the Nemaha reservation by the Omaha tribe by the 10th article of the treaty of July 15, 1830 (7 Stats. 328).

This office submitted a report on the subject to the department under date of November 14, 1888, reciting the foregoing facts, and conclusions, and stating that Mr. Peters was not adopted by said tribe, was not residing with them when the treaty of March 6, 1865 was made, that his name is not borne upon said roll of those entitled to lands upon the Omaha reserve, that he was upon the reservation without authority, and recommending that authority be granted for his removal therefrom with all others of a like class.

The Secretary of the Interior, under date of December 5, 1888, granted authority as recommended for the removal of Mr. Peters

and all others of a similar class from the reservation, and on the 15th of that month the agent at the Omaha and Winnebago agency was instructed to remove Mr. Peters and the others from the reservation. The agent reported April 3, that Mr. Peters refused to remove and he was again instructed May 10, 1889, to remove him, but it appears that this has not been done.

This office does not deem it advisable to take steps with a view to obtaining a reversal of the decision of the department against Mr. Peters.

Very respectfully, T. J. MORGAN,
Commissioner.

(COOPER.)

266 28953–1890. UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY,
NEB., *September 15th*, 1890.

To the Hon. Commissioner of Indian Affairs, Washington.

SIR: In reply to office letter of Aug. 27th, 1890 "L" 25845–90" in relation to one F. A. Peters and others, I have the honor to report that I did on the 13th of September serve written notice on F. A. Peters, Walter Peters, William Barada and Luke Sailor to remove from the reservation, they all however inform me that they will not remove, until they are compelled to do so by process of law or force.

In regard to others who had land on the old Nemaha reservation holding allotments on the Omaha reservation, I find that such is the fact, but from the best information I can obtain, the Omahas consented to their admission to tribal rights. Letter and enclosures of Mr. Sexton said to be forwarded in your letter were not received.

Very respectfully, ROBERT H. ASHLEY,
U. S. Ind. Agent.

267 L. Enclosures.

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DEPARTMENT OF THE INTERIOR, C. F. L.
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Oct.* 2, 1890.

The honorable the Secretary of the Interior.

SIR: Referring to office report dated November 14, 1888 (copy herewith) requesting authority to remove one Frank Peters and all others of a like class from the Omaha reservation, in Nebraska, and to the reply of the department dated December 5, 1888 (copy enclosed) authorizing the removal of said Peters and any other persons who might be upon said reservation under a similar state of facts, and to office report of June 1st, 1889—copy enclosed—stating that

said Peters had refused to comply with the requirement of this department to remove from the reservation, &c., I have to say that Robert H. Ashley, Esq., agent at Omaha and Winnebago agency, Nebraska, by letters dated respectively June 27 and August 26, 1890, reported that the Omaha Indians earnestly desired the removal of said Peters also Walter Peters, Wm. Barada and—(Luke) Sailor—designated as of the same class as said Frank Peters—from the unallotted lands of said reservation.

This office by letter dated August 27, 1890, instructed the agent to require said Frank Peters and others similar to him, intruding upon the unallotted lands of the Omaha reservation, to remove therefrom, to which he replied on September 15, 1890, stating that he had given the parties above named written notice to remove from the reservation, and that they all informed him that they would not remove until compelled to do so by process of law or force.

268 Said Frank Peters is clearly excluded from rights on the Omaha reserve by the 4th article of the treaty of March 6th, 1865 with the Omahas (14 Stats. 668) which extends the benefits thereby conferred as to allotments to such only of their half or mixed relatives as were residing with them at the date of the treaty, and the act of August 7, 1882 (22 Stats. 341) under which the allotment of lands was made on the Omaha reserve provides that such allotments shall be in lieu of the allotments provided for in said article 4.

It appears that the other persons above named also belong to the class excluded from allotments on the Omaha reserve.

There is no claim that the parties referred to have been adopted by the Omaha tribe since the date of said treaty.

The Omahas having received allotments are U. S. citizens, but it is provided in the 8th section of said act that the unallotted lands of said reservation shall be patented to the Omaha *tribe* of Indians, which patent shall be of the legal effect and declare that the United States does and will hold the land thus patented for the period of twenty-five years in trust for the sole use and benefit of said tribe &c., hence section 2149 of the Revised Statutes authorizing the removal of persons from tribal reservations is applicable thereto.

It is evident that the intruders above named do not intend to remove from the reservation, and that force will be requisite for that purpose, and in view of the defiant attitude of the parties, I believe that such force should be sent to eject them as will be likely to prevent any attempt at resistance.

I therefore respectfully recommend that the matter be submitted to the honorable Secretary of War, with the request that

269 he will cause the commander of the nearest military post to said reservation, to furnish, upon the application of Agent Ashley, proper military aid to eject from the unallotted lands of the same said Frank Peters, and such other persons including said Walter Peters, Wm. Barada, and Luke Sailor as the agent may desig-

nate, as unlawfully upon the reservation, under a state of facts similar to those existing in the case of said Frank Peters.

Copies of the letters referred to from Agent Ashley are herewith enclosed.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

(COOPER.)

L.
20281–26613–
and 28953–1890.
1285–1891.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *January* 12, 1891.

F. A.
E. S. W.

The honorable the Secretary of the Interior.

SIR: A delegation of Omaha Indians, duly accredited, is now in this city urging among other things the removal of intruders from their reservation, that is from the unallotted lands of the reservation. They say "You told us that you would hold our land in trust for 25 years, and we think these people are not only opposing us but you also, and we look to you to decide this matter at once and do what is right. If they have rights here we want to know it; if they have no rights we expect you to put them off."

270 At their earnest appeal for prompt action looking to the removal of these intruders, I promised to renew my recommendation of October 2, 1890, that the matter be laid before the Secretary of War with request for military aid to eject said parties from the reservation.

I therefore respectfully invite your attention to office letter of October 2, 1890, and previous report of November 14, 1888, and renew my recommendation that the matter be submitted to the honorable Secretary of War with the request that he cause the commanding officer of the nearest military post to the Omaha reservation, to furnish, upon the application of Agent Ashley, proper military aid to eject from the unallotted lands of the Omaha reservation the intruders therein referred to.

The Omahas feel aggrieved that these people have not been removed. They claim that they are breaking large quantities of land and cutting and selling grass, without right and without paying for it. They say that if they are allowed to remain until spring they will make further improvements, and as they fear get a stronger foothold on the reservation.

Very respectfully your obedient servant,

T. J. MORGAN,
Commissioner.

(LARRABEE.)

"A." DEPARTMENT OF THE INTERIOR, W. S. S.
1285–91. OFFICE OF INDIAN AFFAIRS, E. S. W.
1 incl. WASHINGTON, *January* 13, 1891.

Robert H. Ashley, U. S. Indian agent, Omaha & Winnebago agency, Nebr.

SIR: The act of August 19, 1890, 26 Stats. 329, requires that
271 the interest which has accumulated on the deferred payments for Omaha lands under act of August 7, 1882—22 Stats. 341—be now paid *pro rata* (*per capita*) to the Omahas.

This interest has been accumulating since October 1, 1884, the first payment thereof into the United States Treasury, until on the date of the act first above named, it amounts to $82,408.25 and it is decided to have the payment made by you, at as early a date as practicable.

As your official bond is not large enough to authorize the placing of the entire amount to your official credit at one time, it will be divided into three remittances, viz:

1st remittance	$30,000.00
2nd remittance	30,000.00
3rd remittance	22,408.35
Total	$82,408.35

Steps will be taken today to have the first thirty thousand placed to your credit in the Sioux national bank, Sioux City, Iowa, and as it is desirable that all three payments be completed on or before the 31st of March next, it will be necessary for you to use expedition, and with this object in view, you will, on receipt of this, call upon Special Agent Spencer for a copy of the pay roll, on which he has just completed a payment to the Omahas, and prepare a new pay roll with its assistance.

Although the money is to be sent you at three different times, and so disbursed by you, you will make but one pay roll, in the same manner as if the entire amount of the $82,408.35 was to your credit at one time, and before commencing to pay, set off on the pay roll the full *per capita* share due to each, and every one on the roll, which will be ascertained by dividing the total amount, $82,408.35, by the entire number of names of those entitled.

272 You will then proceed to pay to such a number as may be necessary, commencing with No. 1 on the pay roll, the *full amount* due to each, until the first $30,000 is exhausted.

As soon as the first payment is completed, you will notify me by telegraph, that the second instalment may be placed to your credit, to be paid in like manner, that is: the full amounts of as many *per capita* shares as it will cover, when you will again notify me, that the final instalment may be sent to you, to be paid in a similar manner.

As you have had a good many *per capita* payments to Indians to make, I do not think it necessary to instruct you in detail in regard

to the general rules to be followed, and the customs and usages which experience has shown to be most advisable, but will inclose with this a copy of a letter, addressed by me, under date of 12th instant, to certain Omaha delegates, who are now in this city, by which you will observe that certain parties therein named who belong to a class of trespassers on the Omaha reservation, and who are not entitled to lands, or other benefits, under the act of August 7, 1882, above referred to, are not to be enrolled by you, or allowed any share in the payment, you are about to make.

The names of those specially objected to by the delegates are—William Barada, Thomas Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters, and Mrs. Sailor, and their families, and you will not enroll or pay any of them.

If any one who was properly entitled to enrollment has died since Mr. Spencer completed his enrollment, you will pay the share of the deceased to the proper heirs or legal representatives of the deceased, on certificate from the chiefs and head men, in manner similar to annuity payments, as some of the Omahas have expressed a
273 wish that the established rule of paying one share in such payments after death to the surviving relatives be followed in this case, and I am of the opinion that this will be fair and just, as it would be impracticable to ascertain exactly to whom the payments should be restricted, if an effort were made to commence with the first instalment of interest received in 1884, by the Treasury Department.

If you require more blanks or further instructions, please let me know without delay.

Respectfully,

T. J. MORGAN,
Commissioner.

W. S. S.

43850–1896. E. E. W.

DEPARTMENT OF THE INTERIOR, J. T. B.
WASHINGTON, *November* 17, 1896.

Commissioner of Indian Affairs.

SIR: I am in receipt of your letter of the 10th instant, with its enclosures, reporting upon the cases of Mrs. Margaret and Thomas L. Sloan, applicants for admission to membership with the Omaha tribe of Indians, presented by their attorney, Mr. Ralph W. Breckenridge, of Omaha, Nebraska, who appeals by letter dated October 1st last, from the conclusions reached by your office on September 28th last, in declining to reconsider the cases of the persons named.

This case was before the department, with your letter of July 10, 1894. After due consideration of all the facts then presented, the department decided adversely to the claimants, for the reasons set out in its letter to your office, dated September 6, 1894.
274 No evidence of fact or law is now presented that was not then known to and considered by the department.

The only facts now offered that can be considered in the light of new evidence, is the "decision of the Spencer case," tried May 16,

1896, in the United States court for Nebraska on behalf of the Government to recover an amount improperly disbursed.

Mr. John T. Spencer was appointed by the department in 1890, to make a payment of certain moneys to the Omahas.

When his accounts were received and examined by your office, it was found that he had enrolled and paid annuities to Margaret and Thomas L. Sloan (the present claimants) as members of the Omaha tribe.

Having no authority to enroll or pay annuities to these persons, and making no satisfactory explanation of the reasons for his action, exceptions to his accounts were noted, and suit brought against his bond for the recovery of the amount so paid, with the result that the jury found in favor of the defendant.

The testimony in the case, which is quite lengthy, clearly discloses the probability that the attorney who represented the Government was not in possession of the decision of the department against the Sloans and other mixed-bloods of a like class, or the reasons therefor, nor that he was aware of their true status. It also discloses that important evidence was withheld from the jury that in all probability would, had it been properly placed before the court, have resulted in a different charge to the jury and a different verdict by that body.

Instead it appears that the jury were led to believe that the
275 objections of the department to admitting these people to share with the Omahas must be found either in a misapprehension of their lineage, "or else in the caprice of some subordinate of the department" (*vide* brief of Mr. Breckenridge, p. 10).

The question of the tribal rights of these persons was not before the court. The issue was whether they were properly enrolled by Mr. Spencer.

The last instruction of the court to the jury was as follows:

"To charge Spencer with payments that were made to parties who were not members of the tribe, it must appear they were not members of the tribe and not entitled to share and he had no good and reasonable ground to believe they were not members of the tribe at the time he made the payments to them."

No evidence was offered by the prosecution to show that these persons were not legal members of the tribe, although it was within the knowledge of at least one of the Government's witnesses, who had been officially informed of the status of the case and *why* the department refused to authorize the enrollment of the Sloans with the Omahas; and nowhere in the record of the testimony before the court in the case are the reasons shown *why*, and upon what legal grounds, the department declined allotments to the claimants.

Hence the favorable verdict of the jury for the defendant.

Mrs. Margaret Sloan received an allotment of three hundred and twenty acres of land, as a half-breed Omaha Indian, under the provisions of article ten of the treaty of July 15, 1830, with the Omahas and other tribes (7 Statutes 328–330)—provisions being made therein that the parties to the treaty "might be permitted to make some

provision for their half breeds, and particularly that they might bestow upon them the tract of country within the following limits," etc.

276 This tract of country was known as the Nemaha (half-breed) reserve.

Patent No. 128 for her allotment therein was issued to Margaret Sloan September 10, 1860, under the provisions of section 5 (4) of an act of Congress approved July 31, 1854 (10 Statutes, 332) which directed that the stipulations of the tenth article of the treaty of 1830 be fulfilled by causing the reserved tracts to be surveyed and allotted to the persons entitled thereto.

About the same time her son, William E., the father of Thomas L., one of the claimants, who is the grandson of Margaret, received an allotment (No. 274) of three hundred and twenty acres on the Nemaha reserve, for which a patent was subsequently issued to him.

Thomas L. was born in St. Louis in 1863, and lived on the Nemaha reserve with his grandmother from some time in the 70's until 1880, when they went to the present Omaha reservation.

It is not denied, nor has it ever been, that the Sloans, mother and son, are of part Omaha Indian blood. The tribe recognized them as such and made provision for them, with others, by the treaty of 1830, and in the opinion of the department, and the Omahas themselves, their claims as such mixed-bloods were extinguished by the lands given them under the terms of the tenth article of the treaty named.

As showing that the Omahas so regarded this provision, they provided in their treaty of March 6, 1865 (14 Statutes, 667, article 4), that allotments of land in their reservation in Nebraska should be given to their "half or mixed blood relatives *now residing* with them," and when many of the mixed bloods from the Nemaha reserve went to the Omaha reservation to secure more land, after the passage of the act of August 7, 1882 (22 Statutes, 341), which

277 provided for the sale of a part of the latter reservation and allotment of land in severalty, the Omahas strenuously objected and called upon the department to remove these half-breeds from their reservation. They so objected to the Sloans.

The claims of Margaret and her son William E. were extinguished prior to the birth of Thomas L.

It is nowhere alleged or claimed that the latter is the offspring of a mother having Indian blood, much more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claims of Margaret and Thomas L. are based upon their birthright as Omaha Indians and upon their alleged adoption in recent years by the tribe.

The birthright claim of Margaret has been extinguished. Thomas L. never had such a claim. Neither of them have any claim by adoption, never having been regularly, fairly or properly adopted by the tribe, as was shown by department letter of September 6, 1894.

Notwithstanding that Mr. Breckenridge has advised the department, by letter dated the 30th ultimo, of his withdrawal as attorney for the claimants, I have caused this review of the case to be made, and adhere to the opinion expressed in department letter of September 6, 1894, that the persons named have no valid, legal claims to membership with the Omaha tribe of Indians.

The papers transmitted with your letter are returned herewith.

Very respectfully, D. R. FRANCIS, *Secretary*.

4948 Ind. Div. '94.
6444 " " '96.
7075 " " "
L. B. H.

278 E. E. W. 25062–1897. DEPARTMENT OF THE INTERIOR, WASHINGTON, *June* 21, 1897. J. T. B.

The Commissioner of Indian Affairs.

SIR: I am in receipt of your letter of 16th instant, transmitting for departmental consideration certain papers in the case of Artemesia Frost, a quarter blood Omaha woman, who applies by petition an din person (being present in the city) for membership in the tribe named, with all the benefits, rights and privileges pertaining thereto.

Among the papers submitted are letters from Senators Allen and Thurston of Nebraska, the former of whom asks that a patient hearing be given Mrs. Frost's case, and the latter that her case be reconsidered and sent for further investigation to Lieut. W. A. Mercer, U. S. A., the newly detailed agent at the Omaha and Winnebago agency, Nebraska, on the ground that great favoritism has been shown by the late agent, Captain Wm. H. Beck.

Mrs. Frost is the daughter of Margaret Sloan, a mixed-blood Omaha woman, whose case was decided adversely by the department on November 17, 1896, on the ground that her "birthright" claim had been extinguished under the provisions of article ten (10) of the treaty of July 15, 1830, with the Omaha and other tribes, (7 Statutes, 328–330).

Mrs. Frost's claim is an exact counterpart of that of her mother, who also claimed recognition as a member of the tribe, with the right to participate in the tribal annuities, &c., and to receive an allotment of land.

An examination of Mrs. Sloan's case shows that she re-
279 ceived an allotment of three hundred and twenty acres of land, as a half-breed Omaha, under the provisions of the treaty of 1830, in the tract of country known as the "Nemaha reserve," especially set apart by the said treaty for the purpose of bestowing upon their half-breed relations some provision for their support.

There is nothing in the papers in Mrs. Frost's case to show that she was an allottee in the Nemaha reserve, although it is stated in your letter that she orally admitted having received lands in that

reserve. She has also stated to the department, in the course of an interview in regard to her case, that she received an allotment in the said reserve as an Omaha half-breed. Her rights therefore, seem to have been recognized and she seems also to have been compensated in the manner provided by the treaty in cases of that character.

As showing that the Omahas regarded that the claim of such mixed-bloods were extinguished by the lands given them under the provisions of the treaty cited, the following provision was made in article four (4) of the treaty with them of March 6, 1865, (14 Statutes, 667–668)—

"The Omaha Indians being desirous of promoting settled habits of industry and enterprise among themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, *including their half or mixed-blood relatives now residing with them*," * * *

When many of the mixed-bloods from the Nemaha reserve went to the new reservation to acquire more land, after the passage of the act of August 7, 1882 (22 Statutes, 341) which provided for the
280 sale of a portion of the latter reservation and allotment of land in severalty, the Omahas strenuously objected and called upon the department to remove these half breeds from their reservation.

By her own admission, Mrs. Frost's birthright claim has been extinguished. To admit her present claim would be an injustice to those of the tribe who have never received allotments, and who alone are entitled to participate in the division of the lands in the diminished reserve; would also be against public policy, and a violation of the rules and regulations of the department, which prohibit more than one allotment to an Indian, for any reason whatever.

The papers in the case are herewith returned.

Very respectfully, C. N. BLISS, *Secretary*.

4326. Ind. Div. '97.
8 inclosures.
M. E. W.

MEMORANDUM.—The enclosures in this case were withdrawn by Mrs. Frost.

47401–1897. DEPARTMENT OF THE INTERIOR, J. C. C.
E. E. W. WASHINGTON, *November* 10, 1897.

The Commissioner of Indian Affairs.

SIR: I ack-owledge the receipt of your communication of June 25, 1894, in the matter of the applications of Joseph O'Pelt and nine others of his family for enrollment as members of the Otoe tribe of Indians in Oklahoma, and to be given allotments as such.

It is shown by your letter that this family, or such of them as were in being at that time, enjoyed the benefits of the act of July

31, 1854, and received allotments on the Great Nemaha half breed reservation, and also that their applications for enrollment
281 as members of the Otoe tribe of Indians have twice been rejected by the Otoes in council.

You submit whether the application of the O'Pelt family be again submitted to the Indians for their action in open council; and, in the event of the adoption of said applicants by the tribe, for the purpose of giving them allotments on the Otoe reservation, ask whether the department will authorize the making of such allotments to them.

In view of all the circumstances, I see no reason for again submitting the application of this family to the Indians for their action in open council; they seem to have enjoyed the benefits of allotments as mixed bloods on the Great Nemaha half breed reservation, Nebraska, and are not entitled to further allotment on the Otoe reservation, Oklahoma.

The papers submitted with your letter are herewith returned.

Very respectfully, C. N. BLISS, *Secretary.*
E. H. H.

4600, Ind. Div. '97.
4660, " " "
11 incls.
D. B. P.

Endorsed: Filed Sep. 15, 1902, Geo. H. Thummel, clerk.

282 Thereupon afterwards, to-wit: on the 15th day of September, 1902, copy of "Omaha Indian allotments of 1871" was filed in said case, which said list is in words and figures following, to-wit:

DEPARTMENT OF THE INTERIOR, J. F. A.
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *July* 15, 1901.

I, W. A. Jones, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original, as the same appears on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.] W. A. JONES,
Commissioner.

Omaha Indian Allotments.

1871.

List of allotments made under the provisions of the 4th article of the treaty of March 6th, 1865, with the Omaha tribe of Indians in accordance with the prescribed rules and regulations of the Office of Indian Affairs, approved by the Hon. Secretary of the Interior, October 26th, 1867.

296 OMAHA, NEBRASKA, 1*st Month*, 7, 1871.

I approve the foregoing selections and recommend that certificate be issued to the allottees in accordance with the foregoing schedule.

SAM'L M. JANNEY,
Superintendent of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *January* 21, 1871.

The foregoing list of allotments made under the 4th article of the treaty with the Omaha Indians of March 6th, 1865, recommended by the chiefs and certified to by the agent of said tribe and approved by the superintendent of Indian affairs is respectfully submitted to the Secretary of the Interior for his approval.

H. B. CLUM,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR, *January 26th*, 1871.

I hereby approve the foregoing list of allotments to Omaha Indians as recommended.

C. DELANO, *Secretary.*

Endorsed: Filed Sep. 15 1902 Geo. H. Thummel, clerk.

297 Thereupon afterwards, to-wit:—on the 19th day of September, 1902, deposition of L. L. Frost was filed in said case, which said deposition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES E. Mathewson, Magratahe Grant, John Grant, and Charles Grant, Defendants.

Docket "T," No. 174. Depositions.

Testimony taken in behalf of the complainants, by consent of parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life Insurance building, Omaha, Nebraska, on this 10th day of September, 1902, the complainants being represented by Thomas L. Sloan, Esq., and Charles E. Clapp, Esq., and the defendants being represented by John L. Webster, Esq.

L. L. FROST, produced as a witness in behalf of the complainants, and after being first duly sworn on his oath, deposes and says, as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Are you the husband of Artemesia Frost?
A. Yes sir.
Q. She has a case pending in this court for an allotment?
A. Yes sir.
Q. Did you with Mrs. Frost and your family remove to the Omaha reservation in 1875?
A. Yes sir.
298 Q. Do you remember about the enrollment of your wife and son?
A. I do.
Q. Were you present at the council meeting when the matter was considered?
A. Yes sir.
Q. Tell us, state the circumstances in reference to it?
A. All of the circumstances?
Q. Yes sir?
A. It was in August, 1875, we were living at the Omaha agency, Mrs. Frost, myself and this child that Mr. Sloan has just spoken of. The council were in session, and Major Gillingham sent a runner or messenger, an Indian, telling Mrs. Frost that the council wished her to come to the council house. Mrs. Frost replied that her child was very sick and she would be unable to come. The runner returned back to the counci house, and came again saying that Major Gil-

lingham and the chiefs said that if you cannot come send your husband up. I went up to the council house, and they asked me if we had come home to stay. I told them that we had. The chiefs then instructed Major Gillingham through Louis Saunsoci, the Government interpreter that Mrs. Frost should be recognized, and her family, as members of the tribe, and should draw their allotments of land, that her name and the oldest child should be put upon the payment roll, or the tribal roll, and at the next annual payment all of the children should be placed upon the roll and draw their payments. I thanked them and returned to my home.

Q. Did you receive that annuity payment, or your wife?

A. Mrs. Frost and the oldest boy did, yes sir.

299 Q. Did you and your family have the benefit and use of the tribal pasture?

A. Yes sir, we did, we had our horses and teams in there, and some cattle, four head I think.

Q. Did you have the use of the blacksmith shop and the carpenter shop?

A. Yes sir.

Q. And the grist mill?

A. Yes sir.

Q. And the saw mill?

A. Yes sir.

Q. And the use of the oxen that were there?

A. Yes sir, the teams whenever they were not used, and we wished them.

Q. Did you make a selection of land at that time?

A. I did.

Q. Did you make any improvements on it?

A. I did.

Q. State what they were?

A. They were breaking, and I got out a log house—logs for a log house, but I never got to move them over on the claim. They were stolen from me.

Q. Why did you leave the reservation?

A. On account of sickness in the family.

Q. Were you at the Omaha agency during the spring of 1884?

A. I was, yes sir.

Q. Were you present at any of the councils?

A. I was.

300 Q. Do you remember what interest had you at that council?

A. My family's interest only.

Q. Were they being considered there at that time?

A. Yes sir.

Q. Was there any other person's claims being considered at that time?

A. Yes sir.

Q. Who were they?

A. Mrs. Monett, Louis Neal, and perhaps John Pilcher. I will not be positive about that, but there were three or perhaps four parties whose interests were being considered.

Q. Was there any decision reached in the matter of Mrs. Fuller's claim at that time?

A. Yes sir.

Q. What was it?

A. Mrs. Fuller—that refreshes my memory, and if I am allowed, perhaps it would not be proper, but I might state that Mrs. Fuller's case was also considered in the council. I recollect about it now.

Q. What decision was reached in regard to Mrs. Fuller at that time?

A. A favorable decision. She was allowed her allotments, and her children were allowed theirs.

Q. In regard to the Monett matter, what was the report in regard to that?

A. It was favorable in regard to Mrs. Monett.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

301 Q. You are a full blood white man?

A. I suppose so; that is what I have always been told.

Q. You married Artemesia Sloan?

A. I did.

Q. And she was a sister of Thomas L. Sloan's father?

A. That is correct.

Q. So you are a relative of Thomas L. Sloan?

A. A connection.

Q. Do you talk the Omaha Indian language?

A. I do not.

Q. You do not understand it at all?

A. Very few words in it.

Q. You cannot converse in it?

A. Not properly.

Q. Now this council meeting that you attended was when, in 1884?

A. In 1884.

Q. That was held in the Indian language?

A. It was held in the Indian language, so far as the chiefs—their talk was concerned.

Q. So your knowledge then of what was decided at that council meeting was derived by what some one told you?

A. What I heard and saw, yes sir.

Q. Do you know who was at that council meeting?

A. I know quite a number.

Q. Tell their names?

A. There was Louis Saunsoci, the United States interpreter, there was Miss A. C. Fletcher, there was Mr. Frank La Flesche; there

were a number of the La Flesche family; there was old
302 Sinta Haba; White Horse; Henry Fontenelle; Duba Monie?
Q. Wajapa?
A. Yes, he was there.
Mr. SLOAN: And Prairie Chicken?
A. Yes sir.
Q. Was Sloan there?
A. Yes sir. And Maha Ninga was there and Doctor Wilkinson was there and Louis Neal was there, and Frank Murphy was there, and Baylis was there, and Atkinson was there, their wives and their children some of them, and there was dozens of others, if you give me time I can give you a string as long as your arm.
Q. These people were not members of the council?
A. Some were.
Q. These general names you are speaking about, the Murphys, and the Neals, and all them, were claimants?
A. I understood you, Mr. Webster, to ask me if I knew the names of the people who were there, is that the question?
Q. Weren't we speaking of the council?
A. I think not. I think you asked me the question if I knew the people who were there, and how many of them I knew.
Q. Will you answer my question were those people you mention members of the Omaha council or not?
A. Some were and some were not.
Q. Thomas L. Sloan, was he there?
A. He was there.
Q. He was not one of the council?
A. No sir.
Q. Murphy was not a member of the council?
A. He was not.
303 Q. The Neals were not members of the council?
A. No sir; their case was in suspense at that time.
Q. Now, Mr. Frost, when was this other occurrence you speak of, was it 1875 when you were up there?
A. When I first went up there or subsequently—I have been on the Omaha reservation a great many times.
Q. You spoke of one time when you was there with Mrs. Frost before her name was placed on the roll?
A. That was 1875, August.
Q. How long did they stay on the rolls?
A. I have been told they were carried for years on the roll.
Q. I do not care about what you were told, I ask you how long they stayed on the rolls, and if you do not know, say that?
A. I know that they stayed on the rolls for one year, I know that.
Q. That ended your receiving annuities, did it?
A. It did, so far as we were concerned.
Q. And you have never received annuities since that time?
A. No, sir.
Q. Since 1875?

A. Not to my knowledge.
Q. As a matter of fact, Mr. Frost, you live down in Kansas, don't you?
A. That is my residence.
Q. You have a family of your own down there?
A. Yes, I have property there.
Q. At this council which met in 1884 that you attended, you did not get any allotments for your family?
A. No sir.
304 Q. You did not get an allotment for your family?
A. No sir.

Redirect examination.

Questions by Mr. T. L. SLOAN:

Q. Has your wife a home and residence on the Omaha reservation?
A. Yes, sir.

Witness excused.
By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witness, L. L. Frost was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of the said witness, and by me type-written, and that his signature to said deposition was waived. That said deposition was taken by consent of the parties hereto, at the office of John L. Webster, Esq., Omaha, Nebraska, on the 10th day of September, 1902. That both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
16 folios at 20c	3.20
	$3.30

Pd. by c'l for pl'ffs.
WM. S. HELLER.

Endorsed: Filed Sep. 19, 1902. Geo. H. Thummel, clerk.

305 Thereupon afterwards, to-wit: on the 19th day of September, 1902, deposition of Spafford Woodhull was filed in said case, which said deposition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Magratahe Grant, John Grant, and Charles Grant, Defendants.

Docket "T." No. 174.
Depositions.

Testimony taken in behalf of the complainants by consent of parties before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 3rd day of September, 1902, the complainants being represented by Thomas L. Sloan, Esq., and Charles E. Clapp, Esq.. and the defendants by John L. Webster, Esq.

SPAFFORD WOODHULL, produced as a witness in behalf of the complainants, after being first duly sworn, deposes and says, as follows:

Direct examination by Mr. T. L. SLOAN:

Q. State your name?
A. Spafford Woodhull.
Q. Where do you live?
A. At the Omaha agency.
Q. Are you a member of the Omaha tribe of Indians?
A. Yes sir.
Q. How old are you?
A. Coming 53 now. Next December I will be 53.
306 Q. How long have you lived on the present Omaha Indian reservation?
A. You mean up here at this reservation?
Q. Yes sir?
A. Since they moved up here.
Q. Since about 1857?
A. 1857 or 1858.
Q. *Do* you know Margaret Sloan during her lifetime?
A. Yes sir.
Q. Where did you first meet her?
A. The first I seen her was when I was in the mission school. Her husband, Mr. Sloan, worked in the mill there, in the saw mill.
Q. Was that on the Omaha reservation?
A. Yes sir.
Q. Did you see William Sloan there?
A. Yes sir.
Q. Was Margaret Sloan related to your family?

A. My mother claims relation to her.

Q. State whether or not Margaret Sloan was considered as belonging to the same band as your family, of the Omaha tribe of Indians? Did they belong to the same band as your mother's family?

A. On the other side.

Q. On the Little Cook side?

A. Yes sir.

Q. Then Margaret Sloan was recognized as belonging to Little Cook's band?

A. Yes sir. I am half brother to Little Cook.

307 Q. Did your mother visit Margaret Sloan and her family?

A. Sometimes.

Q. Were you at one time associated with Thomas McCauley and Richard Robinson as grass commissioners for the Omaha tribe of Indians?

A. Yes sir.

Q. By whom were those commissioners appointed? Who appointed you and the others?

A. The tribe.

Q. Were you one of those commissioners in the year 1890?

A. Yes sir.

Q. Who was selected as clerk for the commission for that year?

A. Thomas Sloan.

Q. Were you present when that money was divided up and paid to the tribe?

A. Yes sir.

Q. Do you remember whether or not Margaret Sloan and Thomas Sloan were paid their share of that money?

A. I remember that they got their share.

Q. What body of men were over the grass commissioners and directed them in their work?

A. The councilmen.

Q. Who was it that directed the payment of this grass money to Margaret Sloan and Thomas Sloan?

A. I remember Prairie Chicken was one, and old man Two Crow, old man Sinta Haha, and Four Walker, and old man Allen Walker.

Q. Were those men that you named members of the tribal council?

A. Yes sir.

308 Q. There were some others in addition to those names?

A. Yes, some more.

Q. Do you remember when Mary Jane Paul moved up to the present Omaha reservation?

A. Yes sir.

Q. Had she been away from the tribe any length of time before that?

A. She lived down below you know, and I know the time she moved up to this reservation, where they are now.

Q. Had she been away from the tribe quite a while then?
A. Yes sir. I never seen her first—that is the first time I ever knew her, when she moved up there. She has been away from the tribe I suppose.
Q. After she returned to the tribe did she receive her annuity money?
A. I think she did.
Q. Do you remember when her daughter, Mrs. Wheeler moved up to the reservation?
A. Yes sir.
Q. Was that before or after Mary Jane Paul?
A. A little after I think.
Q. Was the Wheeler family put on the roll?
A. I think they are.
Q. Do you know a member, Mrs. Madeline Scott?
A. Yes sir.
Q. Do you remember her going up to the reservation?
A. Yes sir.
Q. Was that before or after Mrs. Wheeler?
A. After, I think.
309 Q. Was her family enrolled?
A. Yes sir.
Q. These women that I have named, do you know whether or not they are Omaha Indians or white men?
A. They married white men.
Q. Did they have children living when they moved to the reservation?
A. Yes sir.
Q. And were those children of white men enrolled with the mothers?
A. The children are on the pay roll.
Q. What was the custom of the Omaha tribe in regard to enrolling the children of white men marrying mixed blood Indian women at that time, and as long as you remember?
A. I remember when the children were born on the reservation they always have them on the pay roll.
Q. Was that not true just the same in regard to the children of Madeline Stephens that were born off of the reservation?
A. Yes sir.
Q. You knew John Pilcher?
A. Yes sir.
Q. Do you know of his having a homestead in Burt county south of the Omaha reservation?
A. Yes sir.
Q. Where were his children born, there or on the reservation?
A. In Burt county, I think.
Q. After he and his children returned to the reservation were they enrolled upon the annuity pay rolls?
A. Yes sir.

310 Q. Do you know John Pilcher's wife?
A. Yes sir.
Q. Is she an Indian woman or a white woman?
A. White woman.
Q. Does she receive annuity money?
A. Yes sir.
Q. Has she an allotment of land?
A. Yes sir.
Q. Do you know Mrs. Emily Campbell?
A. Yes sir.
Q. Do you remember when Mrs. Campbell removed to the reservation?
A. Yes sir.
Q. Do you know how many children she has?
A. I could not tell you. She has some children. I never paid any attention to that.
Q. Do you know these as I name them, Mrs. Hanicka?
A. Yes, sir.
Q. Do you know Mrs. Olsen?
A. Yes sir.
Q. Do you know Pearly Campbell?
A. Yes sir.
Q. And do you know Willie?
A. Yes sir.
Q. And do you know Ida?
A. Yes sir, Is een some of them. I never visited them.
Q. Do you not know the names of the young ones?
A. I know the oldest ones.
311 Q. Those that I have named, were they grown children when Mrs. Campbell came to the reservation?
A. Yes sir, they were grown children.
Q. Were any of them born on the reservation?
A. Not that I know of.
Q. Have those that I have named been enrolled and allotted lands?
A. Yes sir.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Mr. Woodhull are you related to the Sloans?
A. My mother claims relationship.
Q. What relationship does your mother claim?
A. My mother claims some kind of relationship to Margaret Sloan, Indian relation, a sister to Mrs. Sloan.
Q. What was your mother's name?
A. Rosalie Dorian.
Q. That is French? Was she a half breed?
A. Yes sir.

Q. What was your father?
A. Indian.
Q. What year was it that you were one of the grass commissioners in 1890?
A. Yes sir.
Q. Who was the other one?
A. Thomas McCauley and Richard Robinson, and Phillips, Stabler and Henry Blackbird.
Q. As grass commissioners what did you do?
A. We did the collecting.
Q. For what?
312 A. For the tribe.
Q. I know, but collecting what?
A. Money.
Q. Money for what?
A. For grass land and pasture land, tribal land.
Q. Now when this money was collected who disbursed it, your commission?
A. I am one of them.
Q. The men who collected the money disbursed it, is that it? The commission that collected the money paid it out?
A. Yes sir. We told the tribe we got so much for this grass and pasture,—the leading men, the councilmen, and they told us to pick out the man to fix up—a clerk; so we appointed Mr. Sloan to make up the pay rolls.
Q. So Thomas L. Sloan was the fellow that made out the pay roll for you?
A. Yes sir.
Q. You made the payment on the pay roll that Thomas L. Sloan made out?
A. Yes sir, we did.
Q. And Thomas L. Sloan put his grandmother's name and his own name on that pay roll, is that it?
A. No.
Q. Didn't Thomas L. Sloan write his grandmother's name and his own name on that pay roll?
A. I guess he did. Everybody was willing.
Q. And then you paid a part of that grass money to Margaret Sloan and Thomas L. Sloan?
313 A. What was coming to them.
Q. Answer my question. You paid to Margaret Sloan and to Thomas L. Sloan a part of that grass money?
A. Yes sir.
Q. Did you pay all the money to Thomas L. Sloan, or did you go and see Margaret and pay any part of it to her? Is it not a fact that you paid it all to Thomas L. Sloan?
A. I have not seen the old woman, but we paid it to Sloan.
Q. You paid it to Thomas L. Sloan?
A. Yes sir.

Q. So, as a matter of fact, Thomas L. Sloan was your clerk; he made out the pay roll; he put on his grand-mother's name, and his own name, and he himself took the money for both of them, is not that right?

A. Yes sir.

Q. Now do you know how much money you gave Thomas L. Sloan?

A. About three dollars a head. About $6.00.

Q. What became of that pay roll?

A. Well, that is all I know. I did not know anything about it afterwards.

Q. Who took the pay roll after you made the payment, who retained it?

A. I could not tell you, Mr. Webster.

Q. Did Thomas L. Sloan keep that pay roll?

A. I could not tell you.

Q. Was it filed in the office of the agency?

A. I could not tell you.

Q. Well, the Indian agent did not have anything to do with making up this pay roll?

314 A. We had no agent at that time.

Q. Did not have any agent in 1890?

A. No.

Q. What?

A. No.

Q. Are you sure about it?

A. The first agent we had was Mr. Ashley. I have forgotten if he made a payment in 1891.

Q How much money did you collect all told for the grass land for that year 1890?

A. I could not tell you how much. I forget, you know. I know they gave three dollars and some cents to every head. I could not tell you how much.

Q. Did that include the children?

A. Yes, everybody.

Re-direct examination.

Questions by Mr. T. L. SLOAN:

Q. Was not Richard Ashley agent at the time you was grass commissioner at the Winnebago agency?

A. I think he was agent at the Winnebago; but he had nothing to do with our business

Q. As grass commissioner?

A. Yes sir.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

315 I do hereby certify that the above named Spafford Woodhull was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of the witness, and by me typewritten, and that his signature to said deposition was waived. That said deposition was taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska, on the 3rd day of September, 1902. That both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
22 folios at 20c	4.40
	$4.50

Pd. by counsel for pl'ffs.
WM. S. HELLER.

Endorsed: Filed Sep. 19, 1902, Geo. H. Thummel, clerk.

316 Thereupon afterwards, to-wit:—on the 22nd day of September, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:—

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

JOHN M. SLOAN, ARTEMESIA FROST, and THOMAS L. Sloan
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megratahe Grant, John Grant, and Charles Grant.
No. 174, Doc. "T."

The replication of John M. Sloan, Artemesia Frost, and Thomas L. Sloan, plaintiffs, to the answer of The United States of America, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, defendants.

These replicants, saving and reserving unto themselves, all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer, of the defendants for replication thereunto, say that they do and will aver, maintain and prove their said bill to be true, certain and suf-

ficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by these replicants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these replicants are ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOS. L. SLOAN,
CHARLES E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22, 1902, Geo. H. Thummel, clerk.

317 Thereupon afterwards to-wit:—on the 26th day of September, 1902, depositions were filed in said case, which said depositions are in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Docket "T," No. 174.
Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life Insurance building, Omaha, Nebraska, on this 18th day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp, and the defendants being represented by John L. Webster, Esq.

ARTEMESIA SLOAN FROST, called as a witness in behalf of the complainants, and after being first duly sworn on her oath, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Where were you living about the year 1870?
A. We were living in Richardson county, Nebraska.
Q. Is that on the half breed tract?
A. Yes sir.

318 Q. Do you remember a delegation of Omaha Indians coming down there with notices to come up and select lands on the Omaha reservation?

A. Yes sir.

Q. Was there such notice given to the Sloan family?

A. Yes sir.

Q. Do you remember any of the persons who composed that delegation?

A. Yes sir.

Q. State those that you remember?

A. Seha and other members of the tribe—Omaha tribe.

Q. Do you remember the names of any of the others?

A. No.

Q. Did you receive any written communication from any person in regard to that matter about that time?

A. Yes sir; by Painter, the United States Indian agent of the Omaha tribe of Indians of the Omaha agency.

Q. To whom was that letter addressed?

A. To me.

Q. How was it delivered to you?

A. It was sent by the United States mail.

Q. Do you know what became of that letter?

A. It got lost.

Q. Where did you keep it?

A. Kept it with our other papers in a port folio.

Q. What became of the port folio?

A. It was left at Henry Fontenelle's.

Q. Have you recovered it since?

319 A. No sir.

Q. Have you made search for this particular letter?

A. Yes sir.

Q. Do you remember the substance of that letter?

A. The letter stated that the Sloan family should come up to the Omaha reservation at their earliest convenience and make a selection of their lands.

Q. Was there more than one letter passed between you and the agent in regard to that?

A. Yes, there was several.

Q. Have you any of those letters at all?

A. No sir. I kept them altogether in this port folio and they were left at Henry Fontenelle's, and we failed to recover them or the port folio, either one.

Q. I will ask you to look this over and state whether it is one of the letters in regard to that correspondence or not?

(Handing witness a letter)

A. Yes sir, part of it is written in my husband's hand writing and part of it in my own.

Q. Is that one of the letters written in reference to the notice or communication that you got?
A. Yes sir.

Said letter just referred to is marked for identification Exhibit 1.

Q. Have you a catalogue of the Indian school at Santee?
A. Yes sir.
Q. Do the names of your children appear there?
A. Yes sir.
320 Q. Have you that book with you?
A. Didn't you bring it down?
Q. Not that I know of?
A. It is on your side board. I should have brought it, but you wanted to look over some of the names and I thought perhaps you would bring it down.
Q. Were your children attendants upon the school at the Indian school at the Santee agency?
A. Yes sir.
Q. Do their names appear in the catalogue issued by that school?
A. Yes sir.
Q. What are the names as they appear there?
A. The English name is J. Frank Frost, Chungeska, White Horse.
Q. And the girl?
A. Mary Frost, Hayunga, meaning Frost.

Mr. SLOAN: I now offer in evidence Exhibit 1, a true and correct copy of which is as follows:

"RICHARDSON CO., NEB., *M-rch 20th*, '71.

Dr. E. Painter, U. S. Indian ag't of Omaha.

D'R SIR: I will again drop you a line in regard to the allotment of the Omaha land and the possibility of my wife and boy getting their share of it. I have used my greatest exertion to put my affairs in a shape to come up to the reserve and settle on the land which my wife and boy are entitled to this spring, but find that I cannot go up now without great loss; after I lay aside my corn crop I will undoubtedly come up and commence to improve the land which we are entitled to. That will be about the first of July. Will
321 you be so kind as to send me a copy of the treaty regarding this allotment as there is several of the tribe here that desire to see it. I trust that the first of next July will not be too late for us to go on our land to hold it, but if it should will you please to locate and allot to Francis Artemecia Frost and Philemon H. Frost her son their respective portions. Please let me hear from you in regard to this matter soon.

Yours truly,

LEONARD L. FROST,
Aspinwall, Nemaha Co., Nebraska.

Dr. Painter.

DEAR SIR: It is at my request that my husband has written you in regard to the land that me and my child are entitled to. I refer you to Miss Josephine Fontenelle and Henry Fontenelle as to my being a member of the Omaha tribe of Indians.

FRANCIS A. FROST."

Cross examination of witness waived. Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

322 CAREY LA FLESCHE, produced as a witness in behalf of the complainants, and after being first duly sworn on his oath, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Are you a son of Joseph La Flesche?

A. Yes sir.

Q. Was he the chief of the Omahas known by the name of Iron Eyes?

A. Yes sir.

Q. Are you a full brother of Frank La Flesche?

A. Yes, sir.

Q. And a half brother to the woman known as Bright Eyes?

A. Yes sir.

Q. Have you held any official positions among the Omaha tribe of Indians?

A. Yes sir.

Q. State what they were?

A. I was assistant farmer at the Government school for four years. After that I was on the police force for two years, and now the last year or so I have been Government official interpreter.

Q. Have you attended any of the Indian schools?

A. Yes sir.

Q. State which ones?

A. I attended the old mission school when I was a little boy, and after I was further advanced I was sent to Hampton Normal school, Virginia.

Q. By whom were you sent to the Hampton school?

A. Sent by the Government.

323 Q. And who maintained your expenses while there?

A. The Government.

Q. Did you know a fellow student by the name of Thomas L. Sloan?

A. Yes sir.

Q. From what reservation was he?

A. From the Omaha reservation.

Q. By whom was he sent?
A. He was sent by the Government.
Q. And by whom was he maintained at the school?
A. By the Government.
Q. Were you living on the Omaha reservation through or during Captain Becks' administration as agent?
A. Yes sir.
Q. And do you remember an inspector by the name of Paul Faison who was there?
A. Yes sir.
Q. Do you remember his holding a council at the Omaha agency?
A. Yes sir.
Q. Were you present at that council?
A. Yes sir.
Q. How was that council conducted, was it open or secret?
A. It was open.
Q. Who were in charge of the affairs of the council?
A. Inspector Faison and Henry Fontenelle.
Q. Were you called there?
A. Yes sir.
Q. What was said to you?
324 A. They said that I must sign a petition, one either for the Sloans or against them.
Q. Had you previously signed one for Sloans?
A. Yes sir.
Q. Did any one attempt to induce you or threaten you to make you sign the other petition?
A. Yes sir.
Q. Who was it?
A. It was Fontenelle.
Q. Any one else?
A. And Wajapa.
Q. Didn't the inspector also insist on it?
A. Yes sir.
Q. State what was said by Fontenelle and the inspector, the inspector first?
A. They said that I must not sign a petition for the Sloans, but must sign the petition that was against the Sloans.
Q. What did Henry Fontenelle say?
A. Fontenelle said that I should not sign for the Sloans, because Sloan was not a very good man.
Q. What did Wajapa say?
A. Wajapa said that we do not want to sign this because we have a lawsuit against them.
Q. And they all tried to induce you to turn against Sloans?
A. Yes sir.
Q. What did you say in reply?
A. I told them that I wanted to sign for Mr. Sloan, and he asked

me why I wanted to sign for Mr. Sloan, and I told him that
325 I had known him ever since I was a little boy almost, raised with him, and he was a particular friend of mine, and was the only friend I had when I did not have any, and I had a right to stand by my friends when any trouble arose.

Q. You knew that Margaret Sloan and Thomas Sloan were part Indian blood?

A. Yes sir.

Q. And of Omaha Indian blood both?

A. Yes sir.

Q. You thought they had a right, did you not?

A. Yes, I really did think so.

Cross-examination waived.
Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witnesses, Artemesia Sloan Frost and Carey La Flesche, were first duly sworn to testify the truth, the whole truth and nothing but the truth, that their depositions were reduced to writing in the presence of the witnesses respectively, and by me typewritten, and that their signatures to said depositions were waived. That said depositions were taken by consent of the parties hereto at the office of John L. Webster, Esq., at Omaha, Nebraska, on the 18th day of September, 1902. That both complainants and defendants were present by counsel at the taking of said depositions.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 2 witnesses	.20
18 folios at 20c	3.60
	$3.80

Endorsed: Filed Sep. 26, 1902, Geo. H Thummel, clerk.

326 Thereupon afterwards, to-wit: on the 26th day of September, 1902, depositions were filed in said case, which said depositions are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Docket "T." No. 174. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life Insurance building, Omaha, Nebraska, on this 20th day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendants being represented by John L. Webster, Esq.

JOHN T. SPENCER, produced as a witness in behalf of the complainants, and after being first duly sworn on his oath, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. State your name?
A. John T. Spencer.
Q. Where do you reside?
A. At Dakota City, Nebraska.
Q. Did you ever hold any official position among the Omaha Indians?
A. Yes, sir.
327 Q. What positions if any did you hold?
A. I was the disbursing agent for the Omahas in the year 1890.
Q. Did you ever hold any other position with them?
A. Not with the Omahas. I was superintendent of the industrial school at the Winnebago agency for two years before that.
Q. As disbursing agent what was you doing, what were your duties and what did you do?
A. Under instructions from the Indian office I was to prepare a roll of the Omaha Indians, and also to investigate how the money had been spent and the prior payment of the same annuity which had been paid by Judge Crawford, and after the roll was prepared I was to pay the Indians *per capita*.
Q. What did you actually do yourself; what is the first thing you did?

A. I repaired to the Omaha agency, and I had already prepared a roll from the old rolls and proceeded to investigate the matter.

Q. Did you call the Indians together in any way?

A. They were called together. I did not call them myself. I left the agent do that. I announced we would be there a certain day and he attended to having them notified.

Q. Were they there at a certain day?

A. Yes sir.

Q. Was the council there also?

A. There was a body of men there who called themselves the council and were recognized as being the council.

Q. What did you then do?

A. I proceeded to investigate. I took the roll. The roll is made alphabetical, and as far as I could I investigated how they
328 spent their money, and also to see whether the roll had been correctly prepared.

Q. Did the names of Margaret Sloan and Thomas L. Sloan appear upon that roll?

A. No sir, it was not on the roll that was prepared at first.

Q. Were their names mentioned at that time?

A. Yes sir, their names were mentioned; at least Tom Sloan's name was mentioned, and I think his grandmother's name was too. As we would go over the list there was someone made an application or mentioned the fact that some certain one ought to be on the roll or ought not; I cannot tell which. There was an objection made by some Indian, and he said that Tom Sloan had a better right to be on the roll than this party, whoever he was.

Q. Did you hear anything further said about that, or did a number of the council speak about it?

A. I asked the question if there was any objection to Mr. Sloan going on the roll, and this party, if I remember correctly, stated that he thought he had a better right than the one indicated that they were discussing, and then I think that one--some member, I think he was a member of the council, said he was a relative of the Sloans, and he thought they ought to be on. That was all that was said at the time. In fact I remember that I reserved the right to investigate at the time, because their names were not on the roll.

Q. State whether or not you did make investigation as to their right to be on the roll?

329 A. Yes sir, I made investigations along as I could, as I had opportunity, and finally at the last I made up my mind that they ought to be put on the roll, and so put them on.

Q. Did you have them put on?

A. Yes sir, and I paid them. There was about the same action taken in their case as in the others as far as that was concerned.

Q. Was there an old Indian woman named Tachawe put on the roll at the same time?

A. Yes sir; it was put on anyhow during the time we were investigating and preparing the roll. You mean the Ponca woman?

Q. Yes, sir, the Ponca woman?
A. Yes sir.
Q. Was she paid?
A. Yes sir.
Q. How much were each of those persons paid at the time?
A. It seems to me it was $27.41 if I remember correctly.
Q. How long have you known the Omaha Indian tribe or been familiar with their habits and customs?
A. I knew them some for the last thirty years; more of course since that time, that time, I had known some of them when I was superintendent of the industrial school with the Winnebagos.
Q. Do you know what the custom is as to the enrollment of the children of white fathers and Indian mothers?
A. They were enrolled; that was the custom at that time and had been for some time previous, I do not know how long. Perhaps always as far as I know.
330 Q. They were enrolled at that time, were they not?
A. Yes sir; if there were any children born after the previous roll had been made we placed them on the list, and if any had died we took them off of the list providing they died prior to the year before as I remember.
Q. You are the same John T. Spencer against whom the United States brought an action to recover certain sums that the Treasury Department would not allow in your report, are you not?
A. Yes sir, I am the same one.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Mr. Spencer, you had Thomas L. Sloan employed as your clerk did you not when you was acting as disbursing agent?
A. Yes sir.
Q. And as your clerk, Thomas L. Sloan was the man who made up the list of the Indians, or census report of the Indians, was he not?
A. He took the census before. You did not have reference to that? You mean the census I made.
Q. I mean the census you made of the tribe?
A. He was my clerk. He did the clerical work. He copied the names.
Q. And he wrote down the names, did he not?
A. Yes sir.
Q. On paper?
A. Yes sir.
Q. And in the course of that work he wrote down his own name?
331 A. Not until I told him to.
Q. Are you sure of that Mr. Spencer?

A. Yes, I know all about that.

Q. He wrote down the name of his grandmother, Margaret Sloan, did he not?

A. Yes sir.

Q. Now, did I understand you correctly to say that there was a meeting of the Indians, called council otherwise, about whether or not Thomas L. Sloan should put down his own name and that of his grandmother, Margaret Sloan?

A. There was no such meeting as that; there was no such meeting as that.

Q. As a matter of fact, Mr. Spencer, is it not true that there was not any council meeting of the tribe that authorized either you or Thomas L. Sloan to put his name or that of his grandmother on that roll?

A. I shall have to answer in this way. I presume from my direction that I was the official arbiter on those matters, and finally I would have to decide; but I would have to say that as far as that is concerned I do not know. There was just as much council over his as any of them. We had a meeting there to investigate how they spent their money. That was the object that I had in my mine, and also for them to indicate whether there was any other names that ought to be put on there.

Q. Is it not a fact that you did not have such meeting before you put those names on the roll?

A. That I did what?

332 Q. Is it not a fact that you did not have a meeting with the Indians prior to putting the name of Thomas L. Sloan and Margaret Sloan on the roll?

A. We had a meeting of course as I stated. Their names did not do on the roll without some action. Their names did not go on the roll until about the time I was ready to make a payment.

Q. You are the same John T. Spencer who testified in a suit pending in the United States court wherein Margaret Sloan and others were plaintiffs and members of the Omaha tribe of Indians were defendants involving the question of the Sloans and the Frosts to allotments of land on the Omaha Indian reservation?

A. I remember testifying in your office in some case in which their rights were involved.

Q. Now did you not testify at that time in my office in that case that there was no consultation of the Indians by you with reference to Thomas L. Sloan and Margaret Sloan going upon that roll until after the date when you had paid the money?

A. I do not see how I could testify to anything like that, Mr. Webster?

Q. I am asking you the fact?

A. It is a long time ago. I do not know what I might have testified to then, but I could not have testified anything of that character, I answered your questions. I suppose I told the truth.

Q. Was anyone present at the time when you and Thomas L.

Sloan put the name of Thomas L. Sloan and Margaret Sloan on that roll?

333 A. I could not tell you as to that, because the most of the clerical work was done in the office by ourselves.

Q. Did you have any consultation with Mr. Ashley the Indian agent at that time as to whether or not you should put the name of Thomas L. Sloan and Margaret Sloan on the roll?

A. I had conversations, perhaps more than one with Mr. Ashley, and he was of the opinion, so he expressed to me, that they ought not to be on the roll.

Q. That they ought not to be?

A. Yes sir.

Q. You knew at that time, did you not, Mr. Spencer, that Ashley was the Indian agent and acting under the direction of the Commissioner of Indian Affairs?

A. Yes sir.

Q. And he told you or advised you that Thomas L. Sloan and Margaret Sloan should not go upon that roll?

A. I would hardly put it as strong as that. I think that he advised against it, that in his opinion they ought not to go upon the roll.

Q. And you of your own volition put them on contrary to the advice or instruction of the Indian agent?

A. Yes, that is the fact if I may be permitted to explain. The matter was my own; he hadn't anything to do with it. It was a matter of courtesy that I consulted with him, or he with me.

Q. After you had this advice from the Indian agent Mr. Ashley did you yourself consult the members of the tribe as to whether Thomas L. Sloan and Margaret Sloan should go upon the roll?

334 A. Yes, I think I did. I presume it was after a conversation I had with him. I do not wish to be understood that I did that, to call the council for the purpose, but individually those I could see that I thought knew the circumstance.

Q. Did you in your former testimony given in this office in the former suit pending in the circuit court of the United States for the district of Nebraska testify as follows, to-wit: "Did you ever consult the Omaha tribe when you put Tom Sloan's name on the roll?" and did you not answer to that question, "No, sir, but I afterwards investigated, talked to different persons in relationship to Thomas Sloan, and his grandmother and a number of others, but not to the Indians?"

A. Read that question again?

Q. Question repeated to the witness. "Did you ever consult the Omaha tribe when you put Tom Sloan's name on the roll," that is the question. "A. No sir, but we afterwards investigated, talked to different persons in relationship to Thomas Sloan and his grandmother and a number of others, but not to the Indians?"

A. What was the question before that. There seems to be something left out there.

Q. I will be fair with you. I will let you read it.

Q. Read that question again.

—. (Witness perusing record.) I see that that answer is there. Yes, in the former testimony that has been shown me.

335 Q. At that examination was you not asked the following question, to-wit: "Did you ask the permission of the tribe to put Tom Sloan's name on the roll?" and did you not answer: "A. No, sir, I did not."

A. Yes sir; that is there.

Q. At that time was you not asked the following question: "Q. You never notified the tribe that you had put Tom Sloan's name on the roll either?" to which did you not answer, "A. No sir, I did not, I did not ask the tribe for permission to put any one on the roll."

A. Yes sir, that is correct. That is a fact too.

Q. At that time was you not asked the following question, to-wit: "Q. And you did not take Tom Sloan's name from any prepared roll," to which did you not answer: "No, sir I had but one roll, and that was the one prepared by Judge Crawford, and his name was not on that roll."

A. That would be the fact. I do not remember as to the answer.

Q. Do you not further know, or were you not informed, that at or about the time that you made the payment you have referred to and make up the roll that you have referred to, that the Omaha tribe of Indians had held a council meeting for the purpose of petitioning the Commissioner of Indian Affairs to have Thomas L. Sloan and Margaret Sloan and other of the mixed bloods removed from the Omaha Indian reservation?

A. No sir, there was no such council held; there had been no such council held, or none talked of when the Sloans were paid. To explain further, that was after the payments were made, and the rolls closed, except in a few instances that were held over for

336 further investigation, and I was informed by someone that Mr. Ashley the agent called a meeting or someone called a meeting, and they sent me word to come, but I was through with my business; I thought it was none of my business. I made my investigations and made my decisions. I could not have made any diferent because my work was done, that is a fact.

Q. Your information was that that council meeting related to the removal of Thomas L. Sloan and others of that class from the reservation?

A. I think it was half breeds. My information was if I remember correctly, I was not prepared, and word came to me, but the word came to me at my home at Dakota City, that there was going to be a council in relation to the half breeds. I think they said half breeds. I do not know whether Sloans' names were mentioned at that time or not. I could not remember, but there was something came to me, some word came to me that there was to be a meeting, and I think perhaps the same word said, like to have me present if

I desired. It is a good while ago and I cannot remember positive. The council was through as far as I was concerned, if there was a council.

Q. In your former testimony in a preceding litigation, was not this question put to you, to-wit: "But you was informed that there was such a council," and to which question did you not answer: "A. Yes, after the payment was made I heard there was such a council held, but that was after the roll was prepared."

337 A. I might have answered in that way, but the facts were—I cannot remember what I answered, if the record shows that. The facts were that the payment had been made.

Q. Your former answer said, after the payment was made?

A. I understood you to say after the roll was prepared. It is after the payment was made. That is in the answer. It is not inconsistent.

Q. Now, Mr. Spencer, your former testimony to which I called your attention in cross examination was given some ten years ago and within a period of one or two years after the transactions and occurrences to which they related?

A. It was some years ago, I presume, I presume it was ten years ago.

Q. And the roll that you prepared was in the year 1890?

A. Yes sir.

Q. And the testimony to which I called your attention appears to have been taken on the 29th day of June, 1891? I show you the certificate here, and ask you to refresh your memory?

A. We will have to take it for granted that that was correct. I presume it was in 1891.

Q. So, hence, the matters to which I called your attention in your former testimony were matters which you testified to within about one year after the circumstance of making the roll occurred?

A. Yes sir.

Q. And your present testimony is given some twelve years after the occurrences?

A. About 11 years.

338 Q. 12 years after the occurrences?

A. Yes sir; I was thinking of 11 years after this testimony.

Redirect examination.

Questions by Mr. CHARLES E. CLAPP:

Q. You say you did not inquire of the tribe. Did you inquire of the individual members of the tribe as to whether or not, in making your investigations, as to whether or not Margaret Sloan and Thomas L. Sloan should be placed upon the roll?

A. Yes sir, I inquired of individual Indians there.

Q. Of whom did you inquire?

A. I remember of inquiring of Mrs. Bayliss. Mrs. Baylis was an

Indian half breed woman who was a relative of the Sloans. She was on the roll.

Q. Had she been on the roll for sometime?

A. As far as I know. As far as my information goes she was always.

Q. What relation was she to Margaret Sloan?

A. She was a niece of Margaret Sloan.

Q. Who else did you inquire of?

A. I think I talked with some of the La Flesche family.

Q. Did you talk to Mary Jane Paul?

A. No sir, I think I did not talk with her. She was a very old lady. She is a sister of Mrs. Sloan. She was on the roll; she was on the roll.

Q. On the roll handed to you?

A. Yes sir.

Q. Who else?

339 A. I also talked with Mr. Cabana who was a member of the same family and on the roll. And I also talked with Mr. Pilcher who was a member of the same family and on the roll.

Q. What relation was Mr. Pilcher to Mrs. Sloan?

A. Mr. Pilcher was a nephew of Mrs. Sloan. I talked with those that claimed relationship and that were on the roll, and Mrs. Sloan was a relative and member of the same family. It struck me as if she had a right to be on the roll too.

Q. Did you talk with Judge Crawford at all?

A. No sir, not during the pendency of this proceeding. I understood it from others that he had decided that they ought to be put on the roll. And I think I saw a letter from him either to the Indian Department or someone else to that effect.

Q. You had no personal conversation?

A. No sir; I had no opportunity of a conversation. Judge Crawford was out at West Point, and I was on the reservation. He had been the disbursing agent of the first thirty-five thousand dollars.

Q. Mr. Spencer do you know whether or not it has been the custom of the Omaha Indians to allot mixed bloods who had received lands upon the Nemaha reservation?

A. My investigation. I found that several of them had had land on the Nemaha reservation, or in Richardson county. I think the Nemaha reservation is in Richardson county, and I found further by conversing with these people who were acquainted that Mrs. Sloan occupied the same position as to having land allotted that they did.

340 Q. And these persons who had land in the Nemaha reservation or in Richardson county, as you speak of, also received allotments of land on the Omaha reservation?

A. Yes sir; that was the case with Mr. Pilcher and Mr. Cabana I remember, and I think also of the Paul people, and I do not know but the Campbell family. That I am not quite so positive about.

Q. If the mother was an Indian woman and the father a white

man, the children as I understood you a while ago to say were placed upon the roll, that was the custom?

A. Yes sir.

Q. What was the custom, if there was any, as to the children of Indian men married to white women?

A. They were put on the roll.

Q. Was the white woman also put on the roll?

A. The white woman also was put on the roll.

Recross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. What Indians are you speaking of when you speak of the custom?

A. I am speaking of the Omaha Indians and the Winnebago Indians; that is all I am acquainted with.

Q. Within what period of time is it that you are confining your knowledge of that subject to the Omaha Indians?

A. I am confining it more particularly to the time that I was connected with it.

Q. Since what time?

A. 1890 and previous to that time.

Q. How long had you been agent of the Omaha Indians, if at any time, give the year.

341 A. I never was agent of the Omaha Indians, but I was disbursing agent during the year 1890, and I was surintendent of the industrial school at the Winnebago agency during 1879 and 1880.

Q. The Winnebagos are a different tribe?

A. Yes sir.

Q. And were they at a different agency?

A. No sir; they had the same agent ever since I have had any connection with them. Prior to that time, two or three years prior to 1889, or a few years, I do not remember just exactly, 1879, they had two agencies, but they were joined, and when I went there they were under one agent.

Q. Had separate reservations?

A. Yes sir.

Q. And have always had?

A. Yes sir.

Q. And have today?

A. Yes sir.

Q. This Winnebago industrial school you speak of was on the Winnebago reservation?

A. Yes sir.

Q. But not on the Omaha reservation?

A. No sir.

Q. So then your actual connection with the Omahas was simply as disbursing agent for the year 1890?

A. Yes, that was my official connection.

Q. And that kept you on the reservation how long?

A. Oh, a few months.

342 Q. That was the extent of your official knowledge of these men that you testified about?

A. Well, I would not hardly want to answer that in that way, because I had other means of knowing and consulting the rolls and talking about what the custom was, but that was the extent of my official knowledge—actual official knowledge.

Q. That is what I asked you. In making up this roll as disbursing agent, that was to disburse what—annuity money?

A. Yes sir, the balance that they had.

Q. That came from the Treasury of the United States?

A. They had $70,000, and they desired to have that made in two payments, and Congress passed an act——

Q. I do not care for that. So that as disbursing agent you had nothing to do with the allotment of lands?

A. No sir.

Q. And you therefore had no occasion to investigate by what right or title any Indian had received an allotment of land on the Omaha reservation?

A. I had no occasion to investigate why any Indian received an allotment of land. I did investigate though as to who had land.

Q. You had no occasion to pass judgment upon the question whether such an allotment had been properly or improperly made?

A. No sir. The most of my investigation was as to who had allotments and what the name was, so that our roll name and the allotment name would be the same.

Q. When you came to Thomas L. Sloan and Margaret you departed from that rule and put on two persons who had not received allotments, did you not?

343 A. Yes sir.

Q. You said you talked with Cabana about it. Who suggested to you to consult Cabana as to whether Thomas L. Sloan's name should go on that?

A. I do not think anybody did. I am not sure, We did not have to have anybody.

Q. How did you happen to go to Cabana?

A. Cabana was an intelligent Indian, and he was a friend of mine in whom I had confidence, and of course he had opportunities of knowing the relationship of Mrs. Sloan to the rest of them generally.

Q. Didn't you know that he was a relative of the Sloans before you went to him?

A. Yes sir, and I know as a lawyer that when we wish to consult or decide on the genealogy of a family we go to the relatives.

Q. So it happened that you went to the Pilchers, and they were also related?

A. Yes sir.

Q. So, as a matter of fact, Mr. Spencer, the only persons that you can remember that you talked with as to whether you should put Thomas L. Sloan and Margaret Sloan on the roll or not were relatives of the Sloan family?

A. I would not say that. I remember distictly Flowing Woods. I probably talked with others.

Q. And when you was doing that Thomas L. Sloan was here a clerk, making up the roll to see who this money should be paid to?

A. Yes sir. I would like to add to the answer that we had no influence as far as putting him on the roll was concerned. In fact it had the opposite if any.

344 Redirect examination.

Questions by Mr. THOMAS L. SLOAN:

Q. Had the old Indian woman who had been living among the Poncas and married to a Ponca an allotment of land?

A. No sir, I think not. I think there were several Indians that had not allotments of land yet; none of the children that I put on the roll had allotments of land, or white women that were married to Indian men had allotments of land,—many of the Indians subsequent to the allotment of lands.

Q. There were several of such besides the Sloans?

A. Yes sir; I did find out by investigation that the land that the Sloans claimed were recognized in a measure, and were not allowed to be taken by any other Indians.

Questions by Mr. C. E. CLAPP:

Q. Did your duties as the superintendent of the industrial school while you were in that capacity, did you have occasion to investigate the records of the Omaha tribe of Indians?

A. No sir, not of the Omahas, part.

Q. Were you called to the office of the Omaha reservation to assist in the office work?

A. No sir, not in particular.

Q. Along at any time prior to that?

A. No sir.

Witness excused.

It is hereby stipulated between the parties that the signature of the witness to the above entitled deposition is hereby waived.

345 I do hereby certify that the above named witness, John T. Spencer, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of said witness, and by me typewritten, and that his signature to said deposition was waived.

That said deposition was taken by consent of the parties hereto, at Omaha, Nebraska, on the 20th day of September, 1902, that both complainants and defendants were present by counsel, at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

40 folios at 20 cents per folio	8.00
Swearing 1 witness	.10
Certificate	.25
	$8.35

Endorsed: Filed Sep. 26, 1902, Geo. H. Thummel, clerk.

346 Thereupon afterwards, to-wit:—on the 26th day of September, 1902, depositions were filed in said case, which said depositions are in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants, *vs.* THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Magratahe Grant, John Grant, and Charles Grant, Defendants.	Docket "T," No. 174. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of Mr. Lewellyn, in the city of Brownville, Nemaha county, Nebraska, on this 23rd day of September, 1902, the complainants being represented by Thomas L. Sloan, Esq., and the defendants by John L. Webster, Esq.

ROBERT W. FURNAS, called as a witness in behalf of the complainants, and after being first duly sworn on his oath, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Where do you reside?
A. I reside here, in Brownville, Nebraska.
Q. How old are you?
A. I am in my 79th year.
Q. You were the first governor of this State?

A. No, I was not.

Q. Sir?

347 A. No, Mr. Butler was the first governor.

Q. You succeeded him?

A. Yes sir.

Q. What official position did you hold, and do you hold now?

A. I do not know as I hold any that you would call a public office.

Q. Are you the secretary of the State Fair Association?

A. I am secretary of the State board of agriculture.

Q. Were you United States Indian agent for the Omaha tribe of Indians?

A. I was.

Q. Do you remember the years?

A. 1864 to 1867, I think along there, somewhere.

Q. About four years?

A. No, not quite four years. Andrew Johnson disposed of me before my four years were up.

Q. Where did you reside during the time you were Indian agent?

A. On the reservation.

Q. Among the Indians at the agency?

A. Yes sir.

Q. Were you connected with the making of the treaty of March 6th, 1865?

A. I was of the treaty, and I think that is the date of it. I have a copy of it; that was about the date. I can give it exactly by looking at the date. It was concluded, it says it was concluded March 6th, 1865. (Witness referring to document.)

Q. In what capacity were you acting in the negotiating of that treaty?

348 A. I was one of the commissioners that was called.

Q. Commissioner of the United States?

A. Clarke W. Thompson and myself were the commissioners.

Q. On behalf of the United States?

A. I do not know as to that; I do not know whether it would be characterized as commissioner on the part of the United States or of the Indians.

Q. "Treaty by and between Clarke W. Thompson and Robert W. Furnas, commissioners on the part of the United States?"

A. That would be it then.

Q. Were you present at the council of the chiefs in the discussing of that treaty?

A. Yes sir.

Q. What was the intention there expressed in regard to the rights of their mixed bloods and half breeds on the Nemaha reservation participating in that treaty?

Mr. WEBSTER: Objected to as incompetent, and as secondary evidence.

A. It was my understanding then and now that they were to be equal participants with the other Indians; that they would be cared for in like manner as the Indians themselves.

Q. Who if you remember was the spokesman expressing that on behalf of the chiefs?

A. They all participated in the discussion more or less. There was one of the oldest chiefs Noise, or Muttering Thunder, who was the oldest chief that was present, and I think now, I remember, that he perhaps had more to say in consultation than any other one, while they all participated in the discussions and questions.

349 Noise perhaps had more to say in regard to it, from the fact that he had some relatives on this half breed reservation here that he was desirous of having protected and cared for as did others; but it was the general understanding as I recollect now that the half breed Indians from the women, where white men had married into the family—married into the tribe—and the women, that their children should be equal participants, with the Indians themselves.

Q. Were any persons mentioned at that time of mixed blood who were designated as being entitled under the treaty?

A. Yes, I think I call to mind some, and perhaps not all that was called—there was called the Sloan family and the Barada, and I do not know that I can now call to mind—I remember those names were talked of.

Q. Do you remember the Louis Neal family?

A. Yes sir. The Neal family, two, yes sir; Louis Neal I think himself was a full blood Indian, was he not? I am not so sure about that. I know he was here.

Q. He was a half breed, part Otoe and part Omaha?

A. Yes sir, I think so, but he was called an Indian. I do not think he was classed as a half breed, although he might have been part Otoe and part Omaha.

Q. Did you know at that time what was the custom of the Omaha tribe in regard to recognizing Indians, those children born of Indian women, or mixed blood Indian women married to white fathers?

A. Yes, I think the understanding that the Indians were, the children went with the women, the Indian women; and I know this, that some of these what we called half breeds and who

350 were not on the reservation direct, but on this half breed reservation here, and one family particularly, if you will allow me to go on with the narration—one family in particular that had gone off of the reservation at the Omaha reservation, had gone outside of it and taken land, Government land, a timber claim, or some sort of a claim at that time, and I know that the half breeds were—when payments were made both from this reservation, and that family I remember, and I think the old pay rolls of which I have copies will show that, that they were there enjoying their portion of the payments.

Q. In what light did the Indians regard the half breeds residing on the Nemaha reservation, as being with the tribe?

A. I think that was all considered the same, whether they resided here or on the reservation, and I repeat what this man Pilcher said that had married an Indian woman and had gone off of the reservation, when they left and had taken up Government land; while he was really off of the reservation he was substantially with them there as neighbors as much so perhaps as many of those that were on the reservation direct.

Q. Was it not a fact that at that time many of the Indian families remained away from the reservation for months and often for periods of a year or more in locations convenient for hunting and fishing for their best advantage?

A. I hardly think their hunts were away that long; they were off of the reservation for quite a time sometimes. I know a good deal of difficulty we had of keeping them on the Nebraska side of the river. They were off on the Iowa side a good
351 deal, and a good deal of complaint was made of them; they committed depredations on the other side of the river, and I do not think now that in so far as hunting was concerned that they were off—they had their two seasons of hunting, one in the winter and one along about this time or earlier than this perhaps; and they might have been off on these hunts for a month, and even more, but I cannot say. I cannot now determine what length of time they were off. They were generally off and stayed as long as they had success and were enjoying themselves, and then they came home.

Q. Were there any of the full blood Indians who visited back and forth between the Omaha and Nemaha reservation remaining on visits for extended lengths of time among their relatives on the Nemaha reservation?

A. What do you mean by the Nemaha reservation I do not understand it?

Q. The half breed reservation?

A. Yes sir, they have been passing since I have been here. Since I have been home from the reservation, and they had their visits before, but perhaps I do not know as much before as I did afterwards, because they always called on me when they went to or from their home, going down to the folks on the reservation—the Sac and Fox Indians; their reservation was partly in Nebraska and partly in Kansas, right on the line; they would make generally visits when they were through here; they generally stopped here a day or two to get a little feast from me.

Q. Do you know the Frost, the Sloan and the Barada families during the time you were agent?

352 A. The names were familiar to me, but I could not do more than just simply say that I remember the names of the Frosts and the Baradas and the Sloans.

Q. They were then known to you as members of the Omaha tribe, were they not?
A. The Sloans and the Frosts?
Q. Yes sir?
A. Yes, I think they were regarded as half breeds and entitled to share in the rights equally with the Omaha. I met some of them since, but I cannot call to mind now their names at that time.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Mr. Furnas, the half breed reservation that you speak of is located in what particular county, or in what part of Nebraska?
A. In the southeast part here; the lines commence at the mouth of the two Nemahas was the original line, and going up each stream 20 miles I think was the old line defining going up the Big Nemaha and the Little Nemaha, and then striking some geographical line across.
Q. That area of territory lies within what counties at the present time?
A. Richardson and Nemaha counties.
Q. But the half breed reservation was described as commonly known as the Nemaha reservation?
A. Well, we have always—I do not know as I ever heard the term Nemaha mentioned; it was called the half breed reservation at the time. The Indians were just located on that when I came
353 here in 1856; but we understood they always called it the half breed reservation, and I do not know as I ever heard the name Nemaha applied before.
Q. On that half breed reservation that you have described, there were members, or half breeds of what different tribes of Indians?
A. I cannot say, except the Otoes and the Nemahas were, and it seems to me that that was the result of the old treaty of the Prairie du Chien treaty, and I do not remember the details of that, but it seems to me that there were other Indians besides the Otoes and the Omahas entitled to rights on the reservation.
Q. Were not some of the Iowas there?
A. I could not say, before I read the treaty, but it seems to me there were other Indians, but I am not sure about it.
Q. As far as you know there were on the reservation—the half breed reservation the Indians of all the different tribes that you mentioned in the treaty of 1830?
A. The Prairie du Chien treaty?
Q. Yes sir?
A. No, I do not remember of knowing other than the Omaha, and there may have been, but I do not now remember others than the half breeds of the Otoes and the Omahas occupying that under that treaty on this half breed reservation, but yet it seems to me

other Indians were entitled but whether they availed themselves of their rights there I do not know.

Q. Now, the Omaha reservation that you spoke of is located within the boundaries of what counties in the State of Nebraska?

A. I think it is in Thurston county now, the old Indian reservation.

354 Q. And that is in the northeastern part of this State, is it not?

A. Yes sir.

Q. And the half breed reservation is in the southeastern part of the State?

A. Yes sir.

Q. And the distance from one to the other is more than one hundred miles, or more than one hundred and fifty miles?

A. I should think it was. I do not know; it would be a guess. It would be guess work without looking over the map to ascertain it.

Q. I will put it in another way. The half breed reservation is how many miles south of Omaha?

A. We used to when we traveled to Omaha before the days of the railroad call it 85 miles. The members of the legislature obtained 85 miles mileage from here to Omaha when the legislature met in Omaha from this county here.

Q. And Thurston county is about 80 miles north from Omaha, is it not?

A. I should think, about the same distance; I should think it is about as far from the Omaha reservation to Omaha as from this reservation to Omaha.

Q. When you were agent of the Omahas your agency was located on the Omaha reservation up in the northeastern part of the State?

A. Yes sir.

Q. And was there an agency on the half breed reservation?

A. No, I think not; in fact there never was an agency there, that is my recollection. The old agency used to be further south in what is now Kansas.

355 Q. The half breeds on the half breed reservation did not have an Indian agent?

A. No, I think not.

Q. And after they got their patents for lands on the half breed reservation they lived on their lands just as the white people in the State of Nebraska occupy their land, in their own individual landed estates?

A. As far as I know, the same that would govern the reservation, and the same regulation that would govern the land outside.

Q. You knew that those patents on the half breed reservation were patents in fee simple?

A. I do not know anything about the patents.

Q. You know nothing about that at all?

A. No sir.

Q. Then they were patents in fee simple, as far as you know?

A. I think they were, because I know that I—in years ago had occasion to deal in some of those lands, and it was a patent from the General Government. On reflection I remembered that, in fact I had some deal with the land.

Q. Their patents were in fee simple?

A. I judge so. I do not remember now what the patents were, but they were Government patents. I think I have got one or two in my possession now.

Q. As a commissioner in negotiating the treaty in 1865 you reduced the treaty to writing while you were on the Omaha reservation?

A. It was drawn up; the treaty was drawn up in Washington really.

Q. And sent out?

356 A. Sent out by a delegation of Indians that I had taken there for that purpose. I took a delegation of Omahas and Winnebagos both for that purpose.

Q. To Washington city?

A. Yes sir, and the Winnebagos as you all know became afterwards owners of part of the original Omaha reservation up there.

Q. Then the treaty that was signed was prepared in Washington city while you were there and while the Indians were there with you?

A. The delegation of them were there; there were not all the chiefs there, and it was brought back for ratification by the Indians on the reservation. The final ratification was on the Omaha reservation. That is my remembrance. Whether we had to go again to Washington I do not now remember. The treaty was agreed upon, and all the stipulations agreed upon in Washington, but it had to be ratified by all the chiefs and men of authority in the Omaha reservation which was done after we got back. Whether we had to go again to Washington with that treaty I do not now remember. I think not.

Q. Ratified in open council and by the signatures of the chiefs?

A. Yes sir.

Q. And before it was ratified its terms were made known to the chiefs and discussed?

A. Yes sir, they were all there; pretty nearly the whole tribe when it was finally consummated were present.

Q. You knew did you not, Mr. Furnas that after that treaty was ratified that the Indians agreed upon the selections or allotments of land?

357 A. It was what was called an allotment of lands and made, and each so far as I know accepted his allotment, but I do not remember in detail now how it was done. All of the Indians, every member of the tribe was familiar with every foot of land on the reservation, and whether that was done by making an examination of the lands to be allotted or not, I cannot now say.

Q. It was reduced to writing to show the name of the Indian to whom lands were to be allotted, and the description of the land?

A. I think it was; yes sir.

Q. And that allotment was certified to by the chiefs of the tribe?

A. I do not remember now what the stipulations were in regard to the allotment of the land, but that was the object of the treaty, was to allot the lands and get them out of their village relations and old conditions on to their own little farms, that was the object.

Q. You have no personal recollection whether that was reduced to writing or certified to by the chiefs as being correct?

A. No, I cannot call to mind as to the certainty of it, and yet that is my remembrance now that the lands were allotted. It seems there was some of the land held in abeyance for something, but I cannot call to mind now what, nor what was given to each. The records I think, in fact I know if the records are still preserved they would show what was done in that.

Q. Did you yourself have anything to do with making these allotments?

358 A. I do not think the agent had anything to do with the allotments. He might as a kind of a supervisor, supervising something about it, but officially my remembrance now is that I had nothing to do with it officially.

Q. Is it not a fact that that allotment was concluded by your successor and certified to by him?

A. Possibly it might. I do not remember what his name was now.

Q. Was it not Mr. Painter?

A. No, that was not the name. I cannot call to mind his name. He was a young man.

Q. Was it Major Patrick?

A. I do not think so.

Mr. SLOAN: Was it W. P. Callon?

A. I think that is it.

Q. The man that succeeded you was Callon?

A. I think that it was.

Q. And the next man was Painter?

A. I do not know about the next.

Q. At this time, and ever since you came to Nebraska you have lived in Nemaha county, have you not?

A. With the exception of when I was away on official duties at that agency and in the army.

Q. But your residence was always here?

A. My residence has always been in this county; in this town.

Q. In close proximity to the half breed reservation?

A. Yes, it is within eight miles I think of this town; the northern boundary of the reservation is. It may come closer to that in some part of it. It followed the meanderings of the Little Nemaha.

359 Q. When you speak of the Frosts; the Frosts that you refer to were the Frosts that lived on the half breed reservation?

A. I think they did. I simply remember the names of the Frosts and Sloan and Barada and a few others as connected with the Omaha Indians who were residing on the half breed reservation. I do not know that, and I do not know—when the payments were taking place they were on the reservation, and I think they were generally always there. I am not so sure about that, but I would not have known any of them, and I cannot fix any of them in my mind now only by name and since I have met them here within the last few years, and know them now when I meet them, but would not have known them then.

Q. Is it your impression that their names were on the annuity pay rolls?

A. I think they were. I think I have some of those pay rolls today somewheres. I do not know where to go and look for them; but I think I have them; I have a lot of old papers connected with my service there.

Q. Suppose it should transpire as a fact that the Frosts' name does not appear on any of the pay-rolls——

A. Suppose they don't?

Q. Suppose it is a fact that their names do not appear on any of the pay rolls then you would be mistaken in your recollection?

A. Yes sir.

Q. And if it should appear that none of the Sloans or Baradas appear upon the pay rolls then you would be mistaken?

A. I do not know; the best of my impression now is that they were, and yet I would not state positively that they were.

360 Q. Now, of course you understand——

A. I know these half breeds—the half breeds down on this reservation were always I think present when the payments were made on the reservation.

Q. That means nothing more or less then they may have been solicitous about getting payments?

A. Yes sir.

Q. But as a matter of fact, whether they got the payments you do not know?

A. No, I only speak especially of what was the understanding, what was my understanding and what I know, it is old Chief Noise particularly spoke of at the time the treaty was made, and I think that these half breeds of which he speaks, and which we name now were relatives of his, and he was taking an active interest; there was no objection I remember. It was the understanding I think, and it was the general understanding of the Indian chiefs who were present there when the treaty was drawn up, and it was afterwards ratified; it was the general understanding that the children, the half breeds went with the women side, with the Indians, and were regarded as Indians. That was the general understanding.

Q. Do you mean by that that that was your understanding?

A. It was theirs too. And it was brought up by them and not by me. It was a question that was brought up by themselves.

Q. You did not understand the Omaha Indian language at that time?

A. No, not enough to know it, but it was done through interpreters; the business was done through interpreters. I never undertook to learn the language.

361 Q. Your knowledge would be limited to what some interpreter said to you?

A. Yes sir, they were official interpreters that transacted that business.

Q. They were the same interpreters who interpreted for the actual negotiations of the treaty of 1865?

A. At Washington?

Q. Yes sir?

A. Yes sir.

Q. Who were they?

A. Louis Saunsoci, and the other—he was one of the interpreters I forget.

Q. Was Henry Fontenelle and Hiram Chase?

A. Yes sir; Henry came on afterwards. Saunsoci and Fontenelle and Chase went on with me when I went. It is just Saunsoci. They seemed to be the only interpreters; Chase and Saunsoci. Henry don't seem to be on that (indicating). There were other witnesses Balcombe and Nels Patrick.

Q. I observe in this treaty that you just handed me, the words "including their half or mixed blood relatives now residing with them" is underscored by a lead pencil. Who did that?

A. I do not remember.

Q. I show it to you (handing witness treaty)

A. I do not know.

Q. How did you come by that document?

A. Mr. Sloan gave me this document. I asked him for a copy of it.

Q. Thomas L. Sloan handed it to you?

A. Yes sir.

362 Q. Then it must have been so underlined or marked when it was handed to you by Mr. Thomas L. Sloan.

—. I did not notice it before. I did not notice it even when I read it. It was not made by me.

Q. When did he hand this to you?

A. At the time he was down here before. I asked him if he had a copy of the treaty. I had forgotten really who the other of the commissioners was. Clarke Thompson was commissioner, but I forgot who the other commissioner was, and I asked him to let me have it. I would like to keep it.

Q. Was Thomas L. Sloan down here about a week ago talking with you about negotiations for that treaty?

A. More than a week ago, a week or ten days ago. He came

down here and took my affidavit of this matter substantially what I am doing now.

Q. At that time you and he had a consultation over these matters?

A. Well, no, I do not know that you would call it a consultation. We had a conversation in regard to the matter, and he was asking me a lot of questions the same as you are doing. I remember I was very busy when he was down here. I was very busy, and could not spend much time with him. I merely made the affidavit that I did at that time.

Q. It is now 37 years since the circumstance of the negotiating of that treaty, and these matters you have spoken of transpired?

A. Yes sir, since 1865; I think that is about it.

Redirect examination.

Questions by Mr. THOMAS L. SLOAN:

363 Q. The half breeds residing upon the half breed reservation were frequently back and forth to the Omaha reservation during your administration?

A. Yes sir, visit to and fro, those that were there. Louis Neal was called on a visit back there.

Q. Louis Neal killed Fontenelle?

A. Yes, sir.

Q. He was one of the half breeds that you remember being back and forth who had a residence down on the half breed reservation?

A. Louis Neal?

Q. Yes sir?

A. Yes, he owned quite a farm there on the half breed land down here, quite a farm.

Q. Then it was a general custom and practice at that time for them to be back and forth for their annuity moneys?

A. They were there; I repeat what I said a while ago that I think they were there always when payments were made; that I said to Mr. Webster I was not sure whether—but my impression was that their folks were there, and they were there to receive their portion of the annuity, but if their names were not there, as Mr. Webster says, I should feel that I was mistaken of their being participants.

Q. Do you remember that there was a practice at that time for some of the chiefs, particularly those who were the leaders and chiefs of a particular band, to obtain annuity money for some of their absent relatives by their being added to their family?

A. How is that?

364 Q. Do you remember that it was at that time a custom or practice for the chief of a band to receive and receipt for the annuity moneys of absent Indians belonging to his band, they being counted in as members of his family?

A. No. I do not call to mind any such action as that. We were particular about that, to have the signature of every man that drew a portion of the annuity, to make his own signature. There was a good deal of division of moneys there most always. The Indians were pretty liberal when they got their money, and sometimes there was only one or two in a family, and I have known them before the annuities were paid, one man had a good many children and another one hadn't any, just himself and wife, and in order to help them out a little the one with the large family would give the one with the small family some children in order that they might get more. They were very liberal. If a family did not have but a little then we gave them more. The chiefs used a little politics about it and would distribute the funds around a little among the others.

Q. And you say that was the custom?

A. Yes sir, as I would observe it.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

365 I hereby certify that the above named witness, Robert W. Furnas was first duly sworn, to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in his presence, and by me typewritten, and that his signature to said deposition is expressly waived. That said deposition was taken by consent of the parties hereto, at Louisville, Nebraska, on the 23rd day of September, 1902; that both complainants and defendants were present by counsel at the taking of said deposition.

____ ____,

Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
44 folios at 20c	8.80
Certificate	.25
	$9.15

Endorsed: Filed Sep. 26, 1902, Geo. H. Thummel, clerk.

366 Thereupon afterwards, to-wit: on the 26th day of September, 1902, stipulation was filed in said case, which said stipulation is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN ET AL., Complainant-,
vs.
U. S. OF AMERICA ET AL., Defendant-. } Doc. "T," No. 174.

It is hereby stipulated and agreed by and between the parties hereto that the following statement of facts is true and may be introduced in evidence in the above entitled cause.

John T. Spencer was duly appointed by the President of the United States as special disbursing agent to pay the second installment of $35,000 to the Omaha tribe of Indians in Nebraska. That John T. Spencer paid to Thomas L. Sloan, $27.41 to Margaret Sloan $27.41, to Tacheawe $27.41 and to Nancy Cabany $27.41, being the sum respectively paid to each of the members of the Omaha tribe of Indians.

The Treasury Department, under the advice of the Indian office, objected to the payment of these several items for the reason the Indian office claiming these persons were not members of the Omaha tribe of Indians and therefore not entitled to participate in the distribution.

That on July 23d, 1894, the United States brought an action at law against John T. Spencer and his bondsmen in the district court of the United States for the district of Nebraska, doc. 364 "K," to recover these items and other items which the Treasury De-
367 partment did not allow Spencer. Issues were made up, the case fully tried to a court and jury a verdict and judgment rendered for the defendant which verdict and judgment stand unreserved, unmodified and unappealed from and of binding force and effect upon the United States of America.

It is further stipulated that in said case the Hon. O. P. Shiras, judge, instructed the jury in part as follows:

"As I understand the matter, the question turns upon whom the Omahas recognize as members of their tribe and entitled to participate (in their) money. * * * Now you have heard the facts in regard to each one of these parties and in regard to the payments made to them and you will have to determine it under the evidence. The question really is, first, were they really members and recognized as such by the members of the Omaha tribe. If the evidence satisfies you that it was up to this time the custom and rule of the tribe to recognize white women who married Indians, as members of the tribe and to recognize also those who might be only partially Indian blood and that they still kept up, and they recognized them keeping up, their connection with the tribe, that would justify you in finding that any persons who came within this definition would be and could be recognized as members of the tribe so as to entitle them to their proper share of the division that was to be made at that time.

In regard to the case of Mrs. Sloan whom it appears had been absent for quite a time living in St. Louis, I do not know that any different rule, as I understand it, should be applied to her case. This is the only thing that affects us. Was she of Omaha blood and recognized by the Omaha tribe as a member of that tribe at the time this payment was made. This is the real issue that you come down to.

368 In the gradual transition that is taking place, of tribal absorption taking place, with most of the people of the United States, you can see—and especially those who are only of partial (Indian) blood—leaving their reservation, and leaving the places where the Indian tribes remain and going into other part- of the country; but that mere fact does not necessarily terminate their membership with the tribe. It is a question of whether they are recognized as members of the tribe, and that is to be determined by the facts in each case."

THOMAS L. SLOAN,
CHARLES E. CLAPP,
For Complainants.
JNO. L. WEBSTER,
Att'y for Def'ts.

Endorsed: Filed Sep. 26, 1902, Geo. H. Thummel, clerk.

369 Thereupon afterwards, to-wit:—on the 1st day of October, 1902 deposition of Thomas L. Sloan was filed in said case, which said deposition is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants, vs. THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Magratahe Grant, John Grant, and Charles Grant, Defendants.	Docket "T," No. 174. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 26th day of September, 1902, the complainants being represented by Thomas L. Sloan, Esq., and Charles E. Clapp, Esq., and the defendants being represented by John L. Webster, Esq.

THOMAS L. SLOAN, being first duly sworn on his oath, and producing himself as a witness, testified as follows:

During the year 1890 at a general council of the tribe where a selection was made of what was called grass commissioners, it was

necessary for their work, to have a clerk, at which time I was selected and appointed as such clerk. That after the moneys had been collected by the grass commissioners a general council was held and census taken for the preparation of the annuity roll, at which time the council of the tribe were present and super-
370 vised the taking of the census that was for the purpose of determining those who should be enrolled and paid their *per capita* there with that money. At that time the council directed that Margaret Sloan and Thomas Sloan be permitted to take their share the same as the others—their share of the money, I refer to the grass money, and accordingly I put their names on, and they were paid.

Mr. CLAPP: What year was that?

A. 1890.

Cross examination waived.

Witness excused.

By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

I hereby certify that the above named witness, Thomas L. Sloan, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his said deposition was reduced to writing in the presence of the said witness, and by me type-written and that his signature to said deposition was expressly waived. That said deposition was taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska, on the 26th day of September, 1902. That both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
4 folios at 20	.80
1 certificate	.25
	1.15

Endorsed: Filed Oct. 1, 1902, Geo. H. Thummel, clerk.

371 Thereupon afterwards, to-wit: on the 1st day of October 1902, depositions on behalf of complainants were filed in said case, which said depositions are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Magrathe Grant, John Grant, and Charles Grant, Defendants.

No. 174, Docket T. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 27th day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp, and the defendants by John L. Webster, Esq.

CHARLES P. MATHEWSON called as a witness in behalf of the complainants, and after being first duly sworn, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Are these extracts from your official records? (Handing witness court file in this case.)

A. Well, those on the second and third pages are copies of annuity pay roll.

Q. And is that one of the official records of your office?

372 A. Yes sir.

Q. And the other descriptions and names are they from the official tract books in your possession?

A. Those on the first page are a list of names of lands allotted to them, which are a copy of the tract book, which is a part of the records of the office.

Q. And upon the succeeding pages are those extracts from your official records as well?

A. The next page is partially, that is, I don't know as you would say that down to the names and descriptions of land allotted certain parties, that is part of our official records.

Q. And the second is a list of names of the allottees and the number of the allotments as well?

A. Yes sir, that is correct.

Q. And those certificates following each of those lists were prepared by you after examination?

A. Yes sir.

Mr. SLOAN: We offer in evidence this document marked Exhibit 1, same being the document just referred to by the witness and is one of the files in this case, hence is not copied into this record.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. After the allotments had been made by Fletcher under the act of 1882, and the allotments of Rankin under the amendatory act of 1893, what quantity of lands have been left unallotted?

A. My impression is about six thousand acres.

Q. Does that six thousand acres include the lands which have been set apart pending these litigations for the complainants?

A. It does.

Q. Now, deducting from the six thousand acres the amount reserved as aforesaid, what quantity of lands if any remain unallotted on the reservation?

373 A. There are about in my—this is my impression—I would not say exact; my impression is that there is about two thousand acres, and that two thousand acres includes certain lands along the Missouri river which do not now exist. That is, the survey was made in 1867; I think that is the date of the Government survey, which was in 1867, and of course since that time there is a good deal of these lands have washed away that bordered along the river. So that there is not two thousand acres now.

Q. And does not that also include 640 acres set apart for the mission school?

A. 320 acres—one-half section is reserved for that purpose. Yes sir, I think that includes that too.

Q. So of the land that is unallotted, whatever there is of it, after you deduct the amount for the school and the amount that has been washed away by the Missouri river, what number of acres all told do you think remains?

A. Oh, there would not be; I should think about 1500 acres would be a large estimate.

Q. And that land is situated where, and what is its character?

A. Oh, it is just a forty acre tract here, and a forty there. I do not know that there is any place that there is more than forty acres. There may be some places; there might be a eighty possibly. But I think not; they are fractions, and the odd tracts along bordering the river.

Q. What is the character of the land?

A. The character of the land is of course, the very poorest on the reservation because nobody would take it, outside of the little that is reserved for the school, it most naturally would be the poorest land that there would be on the reservation. They have been picking it out all these years, and this is the little residue that

374 remains.

Re-direct examination.

Questions by Mr. THOMAS L. SLOAN:

Q. Were you present at the council of the Omaha tribe of Indians when they consented to carrying into effect of the act of March 3, 1893?
A. I was.
Q. Were you present in an official capacity?
A. Yes sir.
Q. In what year did that take place?
A. I am uncertain whether it is 1898 or 1899. 1899 I think.
Q. In 1899?
A. I think so.
Q. In what month?
A. It was in May, late in May, or early in June, is my recollection. It was 1899, that is correct.

Witness excused.
By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

THOMAS L. SLOAN, called as a witness in behalf of the complainants, and after being first duly sworn, testified as follows:

Direct examination by Mr. CHARLES E. CLAPP:

Q. Calling your attention to the grass roll, Mr. Sloan, I believe you have already stated you were the clerk of the grass commission?
A. Yes sir.
Q. You may state whether or not the names upon the grass roll in the year 1890 were read by you to the council?
A. They were.
Q. Did you read the names of Margaret Sloan and Thomas L. Sloan from that roll?
A. I did.
375 Q. Calling your attention to Exhibit 1, state whether or not the facts stated in that exhibit are true and correct? (Hand-witness Exhibit 1.)
A. They are.

Mr. CLAPP: We offer in evidence Exhibit 1.
Exhibit 1 reads as follows:
"The following is a list of children of white fathers and mixed blood Indian women who have been alloted land, which children were born off the reservation, and at the time of their birth neither parent was borne upon the tribal rolls:

Elsie Fuller	George T. Scott	Eliza Campbell
Susan E. Fuller	Wesley Scott	Ida Campbell
Louis Fuller		Wm. H. Campbell
Anna L. Fuller		Pearly Campbell
George T. Fuller		Florence Campbell
Charles E. Fuller		Julia Campbell
Isabel Fuller		

List of children born to white women and mixed blood Indian fathers living off the reservation at the time and when neither parent was carried upon the tribal rolls:

Josephine Filson	Charles Pilcher	Mary Cabana
	Mary V. Pilcher	Francis Cabana
		Reuben Cabana."

Cross examination of witness waived.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

CHARLES P. MATHEWSON, called as a witness in behalf of the complainant, and after being first duly sworn, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. You may state what quantity of land was allotted by Miss Fletcher?

376 A. To the best of my recollection it was about seventy thousand acres. I guess I could tell it more exactly.

Q. About what quantity of unallotted land was there remaining after that allotment?

A. My impression was that there was about fifty thousand acres.

Q. Since the Rankin allotment aside from that reserved for the litigants in these various cases, what quantity of land still remains unallotted?

A. My impression is that there is about two thousand acres. That includes all of the land along the river, a good deal of which does not exist at this time; but on the reservation on our plat book showing the original survey I think about 2000 acres.

Q. Do you know what quantity of land was sold under the provisions of the act of 1882?

A. No, I do not; never had any occasion to look that up.

Cross examination waived.

Witness excused.

By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

PRAIRIE CHICKEN, produced as a witness in behalf of the complainant-, and after being first duly sworn, testified as follows:

Silas Woods was sworn as interpreter.

Direct examination by Mr. THOMAS L. SLOAN:

Q. Do you know Jajow Crawford the old man from West Point who made the Omaha's annuity payment?

A. He said, I presume I know him. but if I saw him now I would not recognize him.

377 Q. Were you a councilman when he made the Omahas the payment?

A. Yes sir, I was there.

Q. Do you remember his asking the council whether or not he should enroll Margaret Sloan, and her grandson?

A. He said at the pay roll when his name was mentioned, that I got up and told them, he says; if he has got any blood or Omaha blood in him why he ought to be on the roll, and now, he says, all of you thought we ought to give him and allot to him, and the head of a family, and now the tribe got up as though they would switch me and whip me out; he says, I am the only one that said in favor of him having an allotment. If there was six or seven that was heads of families he favor him having the allotment. That concludes the whole thing; allotting the heads of the family 160 acres to the family; he says for the reason that I said so in order to give them 160 acres to each head of the family because I know that is going to be a long fight to try to get them out. That is what I had it in my mind, he said; we are fighting them yet.

Q. At the payment at the time that Crawford asked about it, were not the only ones who objected, Two Crow and Wajapa?

A. He said all of them; he says, I am the only one that said anything, or a small piece of my word, and all of them hated me he says, for me in favoring him.

Q. Which time is that that they speak about; at the time that they speak about the allotment, or at the time of the payments?

A. He says both times; he says it is in both times, and all of them told me to shut up and not say a word again in favor of him; he says, I know personally that when the first fight was commenced, he says, I collected the money myself to fight this case, and

378 he says, when I fight this case, he says, I had the money myself; I collected the money from the tribe and kept it myself, and then when I got through collecting, and then I took it to Thomas McCauley, the treasurer to fight this case, the first commencement. He did not want to have anything to do with it any more. He says, when I got through collecting I went to work and put it in the hands of the treasurer and I quit it entirely. I did not want to have any fighting one way or the other. He says, I hear Bill Springer, he got up and tried to collect some from me against this fight. He says, well, I will not pay him nothing. He

says, I do not want to have any blood fighting at all, and that is the reason, he says, I stepped off to one side and let them fight it out. That is all; that is the way I stand.

Q. Was you at the Winnebago agency when the Omaha council were up there in regard to signing and holding a council in regard to Margaret Sloan and Thomas Sloan?

A. I was there.

Q. What was done at that time?

A. He says, now, there is one day they called us up to the Winnebago agency, and we were up there pretty early in the morning; they wanted us up there to be in pretty early in the morning and so we went up there, and now, they told us, in here, while we are against this case, he says, now all these young fellows, probably there was 150 siding in favor, and now, here your councilmen will be bind. He says, these young fellows will lead you. And then says he, now you ought to be in ahead, but these young fellows are leading you in favor, and now, says he, that is what Mercer told us that we ought to be on the head of all this leading business. He says, now, that is the first thing they have done. Now, the second,

379 all the Omahas, when the parties that was in favor of him such as High Chase and Simeon Hallowell, when they are against him, why then the tribe right with them too. And then they went to work and tried to collect a note from them to fight these half-breed cases. They too was right against him, men in their favor. And now, here is Will Springer, was the one that got up this note business, he says from every head of a family, he said, to fight this case. Now from that on it is still the same thing, complaints all times.

Q. How many of the council at the Winnebago agency were in favor of Margaret and Thomas Sloan?

A. He says when we were up there that Mercer has tried to force us to sign because there is so much young fellows in favor that you have to sign. That is what the agent has told us; it is to compel us to sign our names he said. That is all I know, he said.

Q. Are you related to Mary Jane Paul?

A. It is pretty small. I am related to her on account of her and I are born in the same band; in the same band that they were born; it is considered they are related in that way.

Q. You knew Margaret Sloan?

A. I saw her.

Cross-examination waived.

Witness excused.

By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

380 I do hereby certify that the above named witnesses, Charles P. Mathewson, Thomas L. Sloan and Prairie Chicken, were first duly sworn to testify the truth, the whole truth and nothing

but the truth, that their depositions were reduced to writing in the presence of the witnesses respectively, and by me typewritten, and that their signatures to said depositions were waived. That said depositions were taken by consent of the parties hereto, at the office of John L. Webster, Omaha, Nebraska, on the 27th day of September, 1902. That both complainants and defendants were present by counsel at the taking of said depositions.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing three witnesses	.30
24 folios at 20c	4.80
1 certificate	.25
	$5.35

Endorsed: Filed Oct. 1, 1902, Geo. H. Thummel, clerk.

381 Thereupon afterwards, to-wit: on the 1st day of October, 1902, deposition behalf defendant- was filed in said case, which said deposition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants, *vs.* THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.	Docket "T," No. 174. Depositions.

Testimony taken in behalf of the defendants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 27th day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp, and the defendants being represented by John L. Webster, Esq.

CHARLES P. MATHEWSON called as a witness in behalf of the defendants, and after being first duly sworn, testified as follows:

Direct examination by Mr. JOHN L. WEBSTER:

Q. Are you at present the Indian agent for the Omahas and Winnebagos?

A. Yes sir.

Q. Do you know John T. Spencer?

A. I do.

382 Q. Did you know him in 1890?

A. Yes sir.

Q. Do you know of the time when he made—when he acted as special disbursing agent for the payment in the year 1890 to the Omaha Indians?

A. Yes sir.

Q. Did you at that time have any position at the agency, and if so, what was it?

A. I was chief clerk at the Omaha and Winnebago agencies at the time.

Q. Who was the agent?

A. Ira H. Ashley.

Q. Do you know of any conversation between Ashley, yourself and John T. Spencer on the point as to whether Thomas L. Sloan and Margaret Sloan should be put on the roll for payment by the said Spencer at that time?

A. I heard a conversation between Agent Ashley and Mr. Spencer about the matter. It was in my presence in the agency office in which the matter was discussed.

Q. You may state what was said between the parties at that time?

A. I cannot give the exact words. I can give the substance of the conversation. That would be the best I can do.

Q. State it as you best recollect it?

A. Spencer made the statement that he was going to put Mr. Sloan and Mrs. Margaret Sloan on the rolls, and Ashley brought up the matter that they had not been on the previous rolls, and that there had been some correspondence between the department and the office in relation to enrolling those people, and Ash-

383 ley was decidedly—he understood that the rulings of the department, and decision of the department were against enrolling them, and he took issue with Mr. Spencer on the matter. Spencer said that he was going to enroll those, and Ashley was very much opposed to it, and they had quite a conversation about the matter. And during the conversation Mr. Spencer admitted I think that he had not any direct authority to enroll them, but that he was going to put them on and take his chances. That was my recollection of the conversation.

Q. Did he tell you any reason why he was going to put Thomas L. Sloan and Margaret Sloan on the roll for that payment?

A. I think that he looked the matter up and he thought that they were entitled to be on, and I expect that he had a friendly relation to Mr. Sloan.

Mr. CLAPP: Do not state what you expect: state what you know.

A. I do not know. I do not know why; I cannot say that positively.

Q. What was the actual relation between Thomas L. Sloan and John T. Spencer at that time?

A. Mr. Sloan was acting as his clerk in making these payments.

Q. What did he say, if anything about his friendly relation to Thomas L. Sloan?

A. I do not know as I can give that. I can only give my impressions of what I gathered from the conversation. I could not give his exact words. I can give the impression that I gathered from the conversation if that is what you want.

Q. You may state it?

384 A. That he felt friendly to Mr. Sloan, and that from what he looked at the matter he thought he ought to be on the roll, and he was going to take his chances and put him on the roll.

Q. At that time did not Spencer know that Thomas L. Sloan and Margaret Sloan were not on the annuity pay rolls?

A. He couldn't help but know that, because he had a copy of the previous roll in which they were not on.

Q. Their names did not appear on the subsequent pay rolls?

A. No sir, they did not.

Q. Was it not almost immediately thereafter that Thomas Sloan and Margaret Sloan and others brought their suit in the United States circuit court against the members of the tribe endeavoring to assert their rights to allotments of lands?

A. I think it was that year or early in the following year. I think it was sometime during that same year if it was not early in the following year.

Q. In that their rights to membership in the tribe and to allotment was resisted by the tribe?

A. It was; an attorney was employed to litigate the case.

Q. And at that time did you know that the tribe employed John L. Webster to resist the claims of the Sloans and others?

A. I do; yes sir; that was the fact, that the tribe employed an attorney, and Mr. Webster was that attorney to take charge of their case.

Cross-examination.

Questions by Mr. CHARLES E. CLAPP:

Q. You spoke of the suit, what suit do you refer to?

A. I refer to the original suit to which this is the——

Q. What was it?

385 A. The suit of Thomas L. Sloan and others that was instituted.

Q. Against whom?

A. I cannot tell you technically. I think it was instituted against the Omaha Indians; but then whether it was the agent or——

Q. Do you think that that was a suit for an allotment of land?

A. Yes, as I understood it; it was a suit for land and to be ad-

mitted as members of the tribe and share not only in land, but all other benefits that would come to the tribe.

Q. That is your recollection?

A. Yes sir.

Q. Your understanding of that suit?

A. Yes sir.

Q. Don't you know as a matter of fact it was an injunction suit against the agent, and had not anything to do with allotments of land?

A. No, I do not recollect that it was that. I know that it had. It referred to the rights as Omaha Indians other than allotments of land, because I know that the agent—that in annuity payments, that it referred to them and these tribal moneys that was standing to the credit of the Omahas.

Q. What land were they seeking to have allotted to them in that suit?

A. I could not say what land. I suppose it was to establish their rights if they had them as Omahas, and that would carry the allotments. I do not know as it mentioned any specific lands or anything of that kind.

386 Q. Did Spencer tell you that he looked the matter up and thought that Margaret Sloan and Thomas L. Sloan ought to be on the rolls?

A. I do not think he said those words. He said he had inquired into the matter I think; spoke of it in that way. I suppose you could say that he looked the matter up.

Q. Did he say of whom he made inquiry?

A. No, I do not recollect. There was a great deal of conversation that I heard about it at that time, and it was a good many years ago.

Q. You cannot repeat any of that conversation?

A. No, I could not now, positively. It was in a general way that I heard this discussion between Agent Ashley and Mr. Spencer.

Q. Were you there all the time during this conversation?

A. Yes, I think so. It was in the office. We only had one office.

Q. Were you listening to that conversation, or were you engaged in other duties?

A. I expect I was engaged in the work at the desk more or less, part or all of the time. I heard the conversation as a person naturally would.

Q. Has your memory been refreshed in that conversation lately?

A. No, I do not think it has.

Q. When have you first thought of that conversation since it occurred?

A. Mr. Webster asked me this morning if I knew anything about that, and I said that I heard this conversation between Ashley—I had not thought of it before today.

387 Q. And what you have testified here today is simply an impression; you cannot repeat any of the conversation?

A. No, not absolutely. It was a matter that I was greatly interested in.

Witness excused.

By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witness, Charles P. Mathewson, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of the said witness, and was by me typewritten, and that his signature to said deposition was expressly waived. That said deposition was taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska, September 27th, 1902. That both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
15 folios at 20	3.00
1 certificate	.25
	$3.35

Endorsed: Filed Oct. 1, 1902, Geo. H. Thummel, clerk.

388 Thereupon afterwards, to-wit:—on the 1st day of October, 1902, letter from Commissioner of Indian Affairs was filed in said case, which said letter is in words and figures following, to-wit:

L. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, D. C., *December 14th*, 1874.

SIR: I am in receipt of your letter of the 2d instant, by reference from B. Rush Roberts, relative to the desire of Henry Fontenelle, an Omaha half breed, to become a citizen of the United States and to receive his *pro rata* share of the moneys of the tribe, and a patent in fee simple for his allotment of land.

You are advised that there is no general law of the United States making provision whereby Indians can elect to dissolve their tribal relations and become citizens of the United States. Neither is there any general authority of law for paying those who so desire it, their *pro rata* share of the funds of the tribe, or for issuing a patent in fee simple to allottees for the lands allotted to them.

All or either of these things can only be authorized by act of Congress making provision therefor. But if ample authority were provided, it would not be in any way desirable to allow a half-breed or any other member of the tribe to receive his *pro rata* share of the

funds and a patent for his allotment of lands. Whatever is done on a reservation for the Indians belonging to it must be done for all at the same time. If the half-breed desires to go elsewhere
389 and procure his share of the funds during the continuance of their disbursement to the tribe, such an arrangement may be desirable if existing legislation would allow it. It is not improbable that legislation will be procured to cover this object during the present session of Congress.

Very respectfully, your ob't servant,

H. R. CLUM,
Acting Commissioner.

T. T. Gillingham, Esq., U. S. Indian agent, care Supt. Barclay White, Omaha, Nebraska.

Endorsed: Filed Oct. 1, 1902, Geo. H. Thummel, clerk.

390 Thereupon afterwards, to-wit:—on the 2nd day of October 1902, correspondence was filed in said case, which said correspondence is in words and figures following, to-wit:—

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Sept.* 29", 1902.

I, W. A. Jones, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file or of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

W. A. JONES,
Commissioner.

391 WEST POINT, NEB., *Feb'y 14th*, 1889.

Hon. Jno. H. Oberly, Washington, D. C.

MY DEAR SIR: Referring to your letter of instructions of Jan. 25, '89, "A" 1514–'89, wherein I am directed to pay to the legal representatives for those who have died, allow me to call your attention to the fact that in many cases it is difficult to determine who the legal representatives are, and it is also a question whether I should be governed by our laws upon the subject, or by the custom that has prevailed for at least many years, with the tribe. If governed by our laws, orphans will have to be represented by guardians duly appointed. If governed by the prevailing custom of the tribe then the leading men decide all doubtful cases and determine who shall receive the money for minors. This is also true of other special cases—for instance one man left his wife and three children without

any ceremoney and took another. Afterwards he, in order to get the children's money went to his first wife and took the children. At the enrollment the tribe with one voice demanded that the children be enrolled with the mother as a matter of justice, to which I heartily agree. It was finally determined with the consent of the husband and father that he have the oldest boy enrolled with him, and that the other two be enrolled with the mother which was accordingly done. If I done wrong in this, I will thank you to set me right. There are other similar cases where minors reside with their grand parent and even with strangers, with whom they are enrolled.

Again, the agent and tribe understand that a female is a minor until she is 21 years old and have so treated her, while under
392 our laws she ceases to be a minor at 18. They submitted the question for my decision. I am inclined to hold that all such should be enrolled for themselves. Either way will be entirely satisfactory to the tribe. They seem to agree very readily and peaceably upon every point. The leading men think the woman Sloan is entitled to enrollment and would like to see her enrolled. She is said to be a very respectable old lady, but very poor. She did not lay her claim before me.

Some are absent at school and other places and their relatives think they ought to be allowed to receive and receipt for the absent ones inasmuch as payment is made by checks which could be sent to absentees without risk or expense. What say you to this and also the right of parties to be represented by attorney in fact?

The question is also raised whether an Omaha woman who has married a Ponca and left the agency is entitled to annuities.

I find the Omahas largely in debt contracted largely in anticipation of getting this money. They have purchased horses, cattle, lumber, agricultural implements, etc. Under the law and my instructions, I am to instruct the Indians as to how they shall or more properly for what purposes they shall use this money. Now I am certain to be asked whether it is proper for them to pay their liabilities out of this money, and I desire very much to know what if any answer I shall make other or in addition to the general instructions I am to give them as directed in your letter. This is liable to be the most serious matter that I will have to contend with as creditors will be plentiful on pay day. Of course this is a matter I will have nothing to do with unless the Indians submit the question to me.

393 Agent Warner kindly assisted and will still further assist me in the performance of my duties.

Very respectfully, your ob't servant,

JAMES C. CRAWFORD.

Refer in reply to the following:

"A." 4638–'89. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Feb.* 23, 1889.

James C. Crawford, special agent, &c., West Point, Nebraska.

SIR: In reply to your inquiries of 14th instant, you are informed that it is thought best that you return the shares of all deceased persons, and of all orphan minors, to the U. S. Treasury, there to await the claim of legal representatives, and coming of age of the minors.

The original certificate of deposit for all shares returned for any reason, must be forwarded to the Treasurer of the United States, accompanied with a list showing the names of the persons the money was set aside for, and the amount due to each, and the duplicate certificate you will send to this office, accompanied by similar list.

In the case of the family, father, mother and three children; the father having deserted his family sometime ago, and is living with another woman as his wife. I think it would have been clearly allowable for you to have paid the shares of all the children
394 to the mother, but since you report that it has been decided to pay to her the shares of the two youngest children, and to the father that of one child, you may do so, provided he agrees to support and properly care for this one, and you will inform him that in case he does not, the share of this child in the second payment, will certainly be paid to the mother.

In the case of minors residing with others than their parents, you will return their money to the Treasury.

If it is the law of the State of Nebraska that all females attain their majority at eighteen years of age, all such should be allowed to receive and receipt for their own shares.

You may allow the tribal authorities to decide whether or not, you are to enroll the Sloan woman, spoken of in a previous letter.

The shares of all minors who are absent at school, you will pay to their parents, but the shares of all absentees who are of age, should be returned to the Treasury.

Do not pay to attorneys.

An Omaha woman duly entitled to enrollment, and to a share in their annuities, does not forfeit that right by having married a Ponca, who does not reside on the Omaha reservation.

In reference to the question as to your duty in compliance with that part of the act which requires you to direct and advise the expenditure of this money by the Omahas in the manner most conducive to their present welfare, in view of the fact that they have incurred many debts in the expectancy of this money, which they will desire to pay, you are instructed that all cases where such debts

were incurred for objects in harmony with the evidence pur-
395 pose of the act, viz: in making improvements on their home-
steads, and in the purchase of stock, cattle, agricultural implements, and other necessary articles, or in the purchase of forage for their stock, or even for food for such of themselves as were suffering for want of it, you will approve their previous action and allow them to pay all such debts, except in cases where you find that the Indian has been wronged by having promised to pay an exorbitant price, or was cheated into buying something worthless; but where you find a bill presented for any purchase which did not clearly tend to enable the purchaser to further improve his or her condition, or which could not in any way have conduced to their present welfare, you will direct and advise that the claim be not paid from this money, but that it be expended in pursuance of the purposes of the act.

Respectfully,

(Signed) JNO. H. OBERLY,
Commissioner.

W. S. S.

56692. Indian Office incl. No. 2. 1902.

Copy.

13837.

WEST POINT, NEBRASKA, *May 20th*, 1889. (E. L. G.)

To the Commissioner of Indian Affairs, Washington, D. C.

SIR: I have the honor to transmit herewith duplicate certificate of deposit No. 368 for the sum of $1144.92, issued by the First National Bank of Omaha. The cause of the delay in forwarding this was on account of errors in statement of my account furnished me by the bank and which did not agree with my account and caused me to go over my entire pay-roll and accounts many
396 times in quest of the errors which I supposed were my own because of my strong impression that banks were so little liable to err. And since according to the statement furnished me there were no less than a dozen errors, showing about that number of checks and amounts paid twice, which would of course leave that many checks outstanding and unpaid. Being unable to discover any error in my account I went to the bank with my statement only to find that the clerk who had copied the statement from the books of the bank made all of the errors. I have this day transmitted to your office my report in duplicate. The Indians have made excellent use of the money, better in fact than the same number of white men would have done. The Sloan woman was not put on the roll first because I did not get your letter until the roll was

completed. Secondly, at the time of payment the leading men of the tribe seemed to be divided upon the question. I am of opinion she should receive her portion, there being sufficient funds left she can still be paid if you so direct. There is still another Omaha woman who has been dropped from the rolls some years ago, having lived with the Poncas, who now asks for her proportion, to which I will refer in a future letter. The council were unanimous in directing me to request that the other payment be made during the first quarter of the next fiscal year. I have no doubt it would do them more good now than at any future time, while they are opening and stocking their farms.

I have the honor to be,

Very respectfully your obedient servant,

(Signed) JAMES C. CRAWFORD,
Special Indian and Special Disbursing Agent.

56692. Indian Office, incl. No. 1. 1902.

Endorsed: Filed Oct. 2, 1902, Geo. H. Thummel, clerk.

(Here follows genealogy of Sloan, Barada & Peters, etc., marked page 397.)

397 The descendants of Michael Barada and Tuingletha Hacienda, an Omaha Indian woman, are above set forth. The oldest was Margaret who married Thomas Sloan, Antoine Barada next in age, then Mary Jane Paul and then the mother of John Pilcher. All those who were living at the time of the allotment of the Nemaha reservation received land as half-breed members of the Omaha tribe of Indians and are marked thus # left of name. All of the above named underlined in red ink are allotted land under the provisions of the act of Congress of Aug. 7, 1882 and amendment and are recognized as members of the tribe by payment of annuities.

Those names marked thus # and underlined in red ink are persons who have allotments under both the treaty of July 15th, 1830, and the act of Congress of August 7, 1882.

Endorsed: Filed Oct. 3, 1902, Geo. H. Thummel, clerk.

399 Thereupon afterwards to-wit: on the 3rd day of October 1902, genealogical table of Omaha Indian claimants to allotments, suits pending in U. S. circuit court was filed in said case, which said genealogical table is in words and figures following, to-wit:

(Here follows genealogical table of Omaha Indian claimants, etc., marked page 399.)

400 Thereupon afterwards, to-wit:—on the 3rd day of October, 1903, memorandum opinion was filed in said case, which said memorandum opinion is in words and figures following, to-wit:—

401 In United States Circuit Court, District of Nebraska.

THOMAS L. SLOAN
vs.
THE UNITED STATES OF AMERICA.

This case with twenty-four others, in favor of different plaintiffs, *were* submitted to the court at the same time and are all disposed of in the following opinion.

Thomas L. Sloan, Charles E. Clapp, H. C. Brome, Anderson & Keefe, for plaintiffs.

John L. Webster, W. S. Summers, U. S. district att'y, for defendants.

SHIRAS, *District Judge:*

These several suits, The United States being the defendant, are brought under the provisions of the act of Congress approved February 6, 1901, 31 Statutes at Large 760, which enacts:

"That all persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence and prosecute or defend any action, suit or proceeding in relation to their right thereto in the proper circuit court of the United States; and said circuit courts are hereby given jurisdiction to try and determine any action,
402 suit or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty, and in said suit the parties thereto shall be the claimant as plaintiff and The United States as party defendant."

The plaintiffs in the several cases aver in substance that they are in part of Indian blood, being members of the Omaha tribe, and are therefore entitled to allotments of land in the reservation of that tribe, situated in Thurston county in the State of Nebraska; that their applications for allotments have been unlawfully denied them by the officers and agents of the United States, charged with the duty of allotting the lands of that tribe in severalty, and therefore they invoke the jurisdiction conferred upon the court by the act of Congress just cited for the ascertainment and enforcement of their rights.

On behalf of the Government it is contended that the provisions of the act of Congress of February 6, 1901, above cited do not confer upon the courts jurisdiction to review or vacate the decisions rendered by the Interior Department, upon the applications of the several plaintiffs herein, nor to hear and determine whether the plaintiffs are members of the Omaha tribe in such sense that they are entitled to allotments in severalty of portions of the tribal reservation.

This construction of the act practically defeats the evident purpose of the enactment, which is to provide a method for enabling parties, whose claims to allotments have been denied by the department, to obtain an adjudication upon their rights in the proper courts.

While due weight must be given to the rulings and decisions of the department as affecting the merits of the cases, yet it can-
403 not be held, in view of the express terms of the act of Congress, that the rendition of a decision in a given case, adverse to the claim of a particular person, prevents the proper court from taking jurisdiction over a suit brought by such person to establish the right or claim denied to him by the action of the department.

Sloan *vs.* United States 95 Fed. 193.
Smith *vs.* He-Ya-Tse-Mil-Kin, 110 Fed. 60

When the case of Sloan *vs.* United States was before the court upon demurrer to the bill, it was held in substance that the act of 1882 (22 Stat. 341) was intended to take the place of the previous acts and treaties providing for the allotment in severalty of the lands forming the Omaha reservation, and I see no sufficient reason for departing from that conclusion, and therefore the fundamental question to be solved is as to the persons, who under the terms of that act, are entitled to claim allotments in severalty.

Section 5 of the act provides as follows: "That with the consent of said Indians as aforesaid, the Secretary of the Interior be and he is hereby authorized, either through the agent of said tribe or such other person as he may designate to allot the lands lying east of the right of way granted to the Sioux City and Nebraska Railroad Company, under the agreement of April 19th, 1880, approved by the acting Secretary of the Interior, July 27th, 1880, in severalty to the Indians of said tribe in quantity as follows: To each head of a family, one-quarter of a section, to each single person over eighteen years of age, one-eighth of a section; to each orphan child, under eighteen years of age, one-eighth of a section; and to each other person under eighteen years of age, one-sixteenth of a section; which allotment shall be deemed and held to be in lieu of the allotments or assignments, provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for which, for the most part certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided; provided, that any Indian

to whom a tract of land has been assigned, and certificate issued, or who was entitled to receive the same, under the provisions of said fourth article, and who has made valuable improvements thereon, and any Indian who being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract, shall have a preference right to select the
404 tract upon which his improvements are situated, for allotment under the provisions of this section; provided, further, that all allotments made under the provisions of this section shall be selected by the Indians, heads of families selecting for their minor children, and the agent shall select for each orphan child; after which the certificates issued by the Commissioner of Indian Affairs as aforesaid, shall be deemed and held to be null and void."

Counsel for the United States earnestly contend that this section must be read in connection with the limitations found in article 4, of the treaty of 1865 (14 Stat. at Large 667) which declares that:

"The Omaha Indians being desirous of promoting settled habits of industry and enterprise amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, including their half or mixed blood relatives now residing with them, to be cultivated and improved for their own use and benefit; it is hereby agreed and stipulated that the remaining portion of their present reservation shall be set apart for said purpose,"

and that so reading it, allotments under the act of 1882 can be made only to the mixed blood relatives who were on the reservation when the treaty of 1865 was adopted.

I can see no good reason for adopting this view of these statutes. The treaty of 1865 made provision for the allotment in severalty to "members of the tribe" it being declared that the half or mixed blood relatives then residing on the reservation should be deemed to be members of the tribe. The treaty does not recognize the mixed bloods as a separate and distinct class and does not confer any rights upon them by reason of their being mixed bloods, but the declaration of the treaty in substance is, that the mixed bloods residing on the reservation shall be deemed to be members of the Omaha tribe, and as such, to be entitled to the right of allotment.

The act of 1882 makes provision for the allotment of the lands of the Omaha tribe of Indians, and in determining who are to be included within this designation, weight can be given to
405 fact that in the treaty of 1865, mixed bloods residing on the reservation were declared to be members of the tribe, but it cannot be held that the right of allotment under the terms of the act of 1882 can only be exercised by those who could assert such right under the terms of the treaty of 1865. When, in section 5 of the act of 1882, it is declared that with the consent of the Indians, the Secretary of the Interior is authorized "To allot in severalty to the

Indians of said tribe in quantity as follows: to each head of a family, one-quarter of a section, to each single person over eighteen years of age, one-eighth of a section and to each other person under eighteen years of age one-sixteenth of a section," it was certainly not intended to limit this right to an allotment to the members of the tribe who were such in 1865. Many of the members of the tribe now upon the reservation, have been born since 1865, yet their right to an allotment, if living upon the reservation, when the act of 1882 was adopted, is not and cannot be questioned, and by the provisions of the amendment contained in the Indian appropriation act of March 3, 1893, (27 Stat. at Large 630) it is enacted, "That the act of Congress approved August 7, 1882, be and the same is hereby amended so as to authorize the Secretary of the Interior, with the consent of the Indians of that tribe, to allot in severalty, through an allotting agent of the Interior Department, to each Indian woman and child of said tribe born since allotments of lands were made in severalty to the members thereon under the provisions of said act, and now living, one-eighth of a section of the residue lands held by that tribe in common, instead of one-sixteenth of a section as therein provided."

Taking into consideration the express provisions of the act of 1882 and of the amendatory act of 1893, it is clear that it was
406 not the intent of Congress to limit the right to allotments in the Omaha reservation to such persons only as could have asserted the right under the terms of the treaty of 1865. If such had been the legislative intent, apt words of limitation to that end would undoubtedly have been incorporated in these acts, but none of that import are to be found therein.

The act of 1882 in the first section thereof declares, "That with the consent of the Omaha tribe of Indians, expressed in open council, the Secretary of the Interior be and hereby is authorized to cause to be surveyed &c., &c." and in section 5 it is declared, "That with the consent of said Indians as aforesaid, the Secretary of the Interior be and is hereby authorized, to allot the lands &c."

The tribe whose consent was to be obtained was the Omaha tribe, as it existed in 1882, and not the tribe of 1865. The allotment in severalty was not to be made to the members of the tribe living in 1865, but to the members living in 1882. The purpose of the Government, in inducing the Indians to take allotments in severalty, was to provide for the breaking up of the tribal relation and to place the several members of the tribe in such condition that they would be enabled to gain a support for themselves and their families by the cultivation and use of the allotments. Unquestionably the parties entitled to allotments under the act of 1882 were the members of the tribe as it then existed, and the question to be determined is whether the several claimants, who are the plaintiffs in the cases now before the court were in fact members of the tribe when the act of 1882 took effect.

Counsel for the Government contend that in determining the status of the plaintiffs the rule of the common law must be applied, that children of free born parents take the legal status of the
407 father and therefore in these cases, children of a white father and Indian mother must be held to be whites, and as such to be disqualified from sharing in the tribal property belonging to the Indians. In the several treaties entered into between the United States and the Omahas, frequent reference is made to half bloods and mixed bloods, but in none is there a distinction made between those deriving their Indian blood from the mother and those deriving it from the father. It is not to be supposed that the Indians, when called upon to agree to an allotment of their lands under the provisions of the treaty of 1865 and the act of 1882, had knowledge of the artificial rule of the common law, which, if it was applied in these cases, would require the ruling that a half blood, residing with the tribe, the child of white father and an Indian mother, could not be deemed to be of mixed Indian blood, whereas a child of an Indian father and a white mother would be held to be of Indian blood, and therefore entitled to share in the tribal property.

As ordinarily understood by white people, a person of white and Indian parentage is deemed to be a mixed blood, without regard to the source of the Indian blood.

In other words, in common parlance the child of a white father and an Indian mother, as well as a child of an Indian father and a white mother are equally of mixed blood, and therefore, when in a convention with the Indian-, half or mixed bloods are included, no distinction can be drawn between those who derive the Indian blood from the mother and those who derive it from the father.

Thus in Jones *vs.* Meehan, 175 U. S., 1, it is said by the Supreme Court:

408 "In construing any treaty between the United States and an Indian tribe * * * the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."

As further evidence that it is not the intent of Congress, in determining the status of mixed bloods, that the technical rule of the common law should govern, reference may be made to the general Indian appropriation act of June 7, 1897 (30 Statutes at Large 90) wherein it is declared: "That all children, born of a marriage heretofore solemnized between a white man and an Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death recognized by the tribe shall have the same rights and privileges to the property of the tribe to which the mother belong-, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed *as* to debar such child of such right."

As I construe the act of 1882, it was the intent thereof to establish by the terms of that act, the rules to be followed in allotting

the lands of the Omaha tribe. In the treaty of 1865, provision had been made for allotments in severalty and for the issuance of certificates by the Commissioner of Indian Affairs to the allottees, it being provided that to each head of a family there should be assigned not to exceed 160 acres and to each male person of eighteen years or upwards without a family, a tract not exceeding forty acres. It does not appear that much progress in making allotments had been made under this treaty and in 1882, Congress again dealt with the situation by the adoption of the act of June 7 of that
409 year. The act provides that with the consent of the Omaha tribe of Indians, the Secretary of the Interior is authorized to allot the lands lying east of the right of way granted to the Sioux City and Nebraska Railroad Company, "in severalty to the Indians of said tribe in quantity as follows; to each head of a family one-quarter of a section, to each single person over eighteen years of age, one-eighth of a section; to each orphan child, under eighteen years of age, one eighth of a section; which allotments shall be deemed to be in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865" it being further provided that any Indian who had made improvements upon any tract assigned under the treaty of 1865, should have the preference right to select such tract for allotment under the act of 1882, and that when the allotments had been made, the certificates issued by the Commissioner should be null and void, provision being made for the issuance of patents to the allottees.

It thus appears that based upon the consent of the Omaha tribe, the provisions of the treaty of 1865 with respect to the allotment of the lands in severalty are superseded by the provisions of the new agreement or convention evidenced by the act of 1882, and therefore the rights of the plaintiffs to allotments must be adjudged according to the true intent and meaning of that act, and the right to an allotment of a person coming within the terms of that act cannot be rightfully denied him, simply because he could not bring himself within the terms of the treaty of 1865.

Under that treaty no woman, unless she was the head of a family,
and no child under the age of eighteen was entitled to an,
410 allotment, whereas under the act of 1882 each single person regardless of sex, over eighteen is entitled to one-eighth of a section, and each orphan child under eighteen, is entitled to a like amount and each other person under eighteen is entitled to one-sixteenth of a section.

These radical changes in the terms of the act of 1882, as well as the provisions therein contained, that the certificates issued by the Commissioner under the provisions of the treaty of 1865 are to be deemed to be null and void, clearly justifies the conclusion that recourse must be had to the act of 1882 in determining who are entitled to allotments in severalty on the reservation belonging to the Omaha Indians, and that limitations found in previous acts or treaties, but not repeated in the latter act cannot be read into it, in order to de-

feat the rights of one who fairly comes within the terms of the latest convention between the Indians and the Government, as evidenced by the act of 1882. Thus we reach the question of the construction to be given to the terms used in that act, whereby provision is made for the allotment in severalty to the Indians of the tribe of portions of the reservation occupied by them.

Counsel for the Government strongly contend that the court is practically bound to follow the rulings and decisions of the Department of the Interior in these cases upon two grounds; First, that the construction given by the department, charged with the duty of supervising the affairs of the Indians, to the statutes and treaties dealing therewith are entitled to great weight and in doubtful cases should control the judgment of the court, and second; that the rights of the claimants present cases of mixed questions of
411 law and fact which prevents the court from considering the same under the recognized rule that courts will not re-examine questions of fact decided by the department in the disposition of the lands placed in its charge, but are limited to a consideration only of questions of law.

When Congress adopted the act of August 15, 1894, and amended it by the act of Feb. 6, 1901 conferring upon the circuit courts of the United States "jurisdiction to try and determine any action, suit or proceedings arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty" and further provided that any one, in whole or in part of Indian blood or descent, who claimed "to have been unlawfully denied or excluded from any allotment or parcel of land," might bring suit in the proper circuit court for the enforcement of his rights, it certainly must have been the legislative intent to confer upon the courts full authority and right to hear and determine every question arising in any suit brought by a claimant to an allotment. These acts were adopted by Congress because it was brought to its attention that many persons, claiming allotments, had been denied that right by the department, and it was sought to make provision for a method whereby such persons could re-assert their claims before a judicial tribunal.

The real purpose of the acts, conferring jurisdiction upon the courts in this class of cases, would be practically nullified if the contention of counsel should be sustained, to the effect that in all cases wherein the department had ruled against the claimant, the courts are bound to follow the decision of the department. The
412 remedial intent of the legislation in question must be given fair and full force, and this imposes upon the court the duty of hearing and deciding all questions of law and fact necessary to the full consideration and determination of the rights of the several claimants.

The first question presented for consideration is the construction to be given to the act of 1882, in ascertaining the class of persons

entitled to allotments under its provisions. As already stated, I cannot concur in the view that only those entitled to allotments under the provisions of the treaty of 1865 can claim the right under the act of 1882.

The latter act was intended to deal with the situation as it existed at the time of its passage. At that time there was in existence the Omaha tribe of Indians, inhabiting their reservation in Thurston county, Nebraska. The earnest desire of the Government was to bring about the abolition of the tribal system and community of property, and to that end provision was made for the allotment of the tribal lands in severalty among the Indians constituting the tribe.

If such a construction should be put upon the act, that a portion of the persons of Indian blood residing on the reservation in the tribal relation should be excluded from the right to an allotment, it would follow that these persons would be deprived of the benefit they enjoyed as members of the tribe, without receiving any share in the tribal land, an unjust result which certainly cannot be defended upon the words of the act, or upon a fair construction of its real purpose.

It certainly was not the purpose of the Government, in seeking to bring about the severance of the tribal relation, through the allotment of the lands in severalty, to sever such relation in any case without awarding compensation through an allotment in severalty.

413 It was certainly well known to Congress, when that act was adopted, that the Omaha tribe was not composed alone of Indians of the full blood, but that there were then upon the reservation, living with the tribe, many half or mixed bloods. The reasons for awarding to these persons lands in severalty in order to sever the tribal relation, were just as strong as in case of the full bloods, and there is nothing in the language of the act that necessarily restricts the right to an allotment to the full bloods alone. Indeed counsel for the Government admit that there are mixed bloods who are entitled to an allotment, but their contention is, that only those mixed bloods who were on the reservation in 1865 are entitled to allotments.

Under the treaty of 1865, the mixed blood members of the tribe were entitled to allotment, and I can see no sufficient reason for holding that Congress intended to exclude such members, when enacting the act of 1882.

As already said, that act was intended to deal with the situation as it then existed, and to provide for allotment to the members of the tribe, who would otherwise be deprived of their existing tribal rights.

As I construe the act of 1882, it was not intended to make a distinction, with respect to the right to an allotment, between Indians of the full blood, and of mixed blood residing on the reservation in the tribal relation, with one exception to be hereafter noticed, but I

am further of the opinion that this right is not possessed by the mixed bloods, who were not living on the reservation as members of the tribe, when the act of 1882 was adopted. As was well
414 said by Commissioner Price in a letter of instructions issued under date of October 5, 1883, "It would be absurd to contend that the treaty of 1865, or the more recent act of Congress, under which the allotments are being made, were intended as a general invitation to all persons everywhere who might be able to prove the existence of a drop or more of Indian blood in their veins, to repair to the reservation and select an allotment. Manifestly, such was not the intention nor will any such construction be admitted in making the allotments."

It may be that in some exceptional cases, persons might be recognized to be members of the tribe and as such to be entitled to allotments, although not upon the reservation when the act of 1882 took effect, but such recognition should be limited to those persons, if any, whom the tribe clearly deemed to be members.

It must be kept in mind that in the adoption of the act of 1882½ the Congress was not granting or donating the property of the United States, which would justify the application of a strict rule of construction in favor of the United States.

The act of 1882, as well as the treaty of 1865, is a convention between the Omaha tribe and the Government, whereby with a view to encourage the Indians in the habits of civilized life, provision was made for breaking up the tribal relation, through the allotment of portions of the reservation in severalty. Therefore, it seems to me that the department would be justified in making allotments, not only to the actual resident members of the tribe, but to such others, as the tribe, acting in open council, or the equivalent, should declare to be members of the tribe, and entitled to share in the allotment of the tribal land.

Such allotments, however, would be matters of favor, depending upon the action of the tribe, and not upon the rights created
415 by the act of 1882, and therefore claimants, who cannot bring themselves within the provisions of the act of 1882, by showing that when that act took effect, they were residing on the reservation in the tribal relation, but who claim that as a matter of fact they were recognized by the tribe to be members thereof, cannot rightfully expect that the courts will refuse to accept and follow the ruling of the department upon the question of such recognition. The agents, charged with the duty of making the allotments, who visit the tribe have a much better knowledge of the action taken by the tribe than can be gained by the court, and their decision upon a fact of this nature, especially when duly affirmed by the officers of the Interior Department, should ordinarily be accepted as conclusive. In the numerous reports of the allotting agents, introduced in evidence in these cases, it is reported that none of the several claimants are recognized by the tribe as members entitled to allotments and these findings of fact have been approved by the Sec-

retary of the Interior, and they will for the reasons stated, be accepted as final by this court, in the further consideration of these suits.

It is further contended on behalf of plaintiffs that the act of 1882 did not take effect until the consent of the tribe was obtained thereto, and therefore all mixed bloods who had returned to the reservation at that date are to be deemed to be within its terms, the same as though they were residents on the reservation in 1882.

It is shown in the evidence that a special agent, to make the allotment, was sent to the reservation in the early part of 1883,
416 and the assent of the tribe to the provisions of the act had evidently been had by that time. Even if it should not be properly held that the rights of the parties are to be determined by the actual situation, as it existed on the 7th day of August 1882, being the date of the adoption by Congress, of the act in question, yet it cannot be held that a mixed blood, who was not at that date an actual resident of the reservation, could make himself a member of the tribe in such sense as to entitle him to the rights created by the act of 1882, by simply coming upon the reservation, it not being known that his action was approved by the tribe acting thereon. If the tribe had recognized and approved the application of a particular Indian, their action would have resulted in his application being recognized by the allotting agent, but in the absence of such recognition, it must be held that a mixed blood who was not a resident, in the tribal relation, of the reservation, when the act of 1882 was adopted by Congress could not force the tribe to recognize him as a member, entitled to share in the allotment, by coming upon the reservation, even though he did so by invitation of his relatives in the tribe.

A further question necessary to be considered is the effect to be given to an allotment made under the terms of the treaty of 1830, whereby what is known as the Nemaha reservation was assigned for the use and occupancy of the half breeds of the tribe, it being therein provided that "The President of the United States may hereafter assign to any of the said half breeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section of six hundred and forty acres to each individual."

It cannot be held that it was the intent and purpose of this section of the cited treaty to confer upon the half breeds of the tribe a greater interest or right than was possessed by the full bloods, and yet that would be the practical result, if it should be ruled
417 that a half breed, after reaping the benefit of an allotment in the Nemaha reservation, should also be entitled to a further allotment in the present reservation, and without further elaboration of the reasons for so ruling, I hold that all mixed bloods who have secured allotments in the Nemaha reservation are debarred from an allotment in the Thurston County reservation.

Where, however, a mixed blood was living in the tribal relation upon the present reservation when the act of 1882 took effect, his

right to an allotment, as a member of the Omaha tribe, would not be defeated because his parents or either of them had secured an allotment in the Nemaha reservation.

Being of the mixed blood and being in fact an actual resident in the tribal relation upon the reservation, he must be deemed to be an Indian of the Omaha tribe, and as he had not received an allotment under the treaty of 1865, his rights under the act of 1882 cannot be defeated because his parents may have reaped the benefit of an allotment. Thus under the express terms of the act of 1882, the heads of a family are entitled to an allotment and so also are their children.

In other words, under the act of 1882, the fact that an allotment under that act has been made to the parent does not defeat the right of the child to a person- allotment. This right of the child is not derived from the allotment right of the parent, nor is it property inherited from the parent, but it is a personal right conferred upon the individual because he is in fact an Indian of the Omaha tribe.

If an allotment under the act of 1882 to the parent, will not defeat the right of the child to a personal allotment, I can see no good reason for holding that an allotment to the parent under any previous act should be given that effect.

As the act of 1882 and the amendatory act of 1893, give to the heads of families one-quarter of a section and to all others one-eighth the question arises whether the quantity to be allotted in a given case, is to be determined by the status of the claimant at the date of the act or at the time when the allotment is made.

By section 5 of the act of 1882 it is provided that the Secretary of the Interior is authorized to allot the lands in severalty.
418 It is not declared that there is hereby granted or allotted to each head of a family or other person so much land, which language, if used, might possibly be construed to be an allotment then taking effect, but the provision is that the Secretary of the Interior, through agents to be by him selected, is to make an allotment in the future, and the fair construction of this provision is that the status of the parties, when the allotment is made or claimed, determines the quantity to be assigned. This I understand is the rule followed by the agents of the department in making allotments from time to time, and is the rule that will be adopted in dealing with the cases now before the court.

Having thus considered the questions of law pertaining to the cases in general, it will be necessary to determine in each case from the facts thereof, the rights of the claimant under the construction given to the treaties and acts governing the situation as hereinbefore outlined, each suit being indicated by the name of the plaintiff therein.

THOMAS L. SLOAN.

Claimant is a mixed blood, one-eighth Indian. Is the grandson of Margaret Sloan, the daughter of Michael Barada, a full blood white man, and Taeglaha Haciendo, a full blood Indian woman of the Omaha tribe. Margaret married one Thomas Sloan, a white man in St. Louis, and in 1857 with her husband and children came to the Nemaha reservation and was allotted 320 acres therefrom. In 1881 Margaret Sloan with her grandson Thomas L. Sloan, came to the present reservation and they were residents thereof when the act of 1882 was adopted. Thomas L. was educated by the United States Government at the school at Hampton, Virginia, and
419 while the evidence shows that he is by habit, mode of life and education a white man, that fact does not deprive him of the right to claim an allotment under the act of 1882, as he was at the date of its adoption, living on the reservation, and is in fact of mixed blood. Being a married man, he is entitled to an allotment of 160 acres.

No. 174. JOHN M. SLOAN, ARTEMESIA FROST, and THOMAS L. SLOAN.

In this case, plaintiffs claim as the heirs at law of Margaret Sloan, averring that during her lifetime and while residing on the present reservation she selected the land in the bill described for allotment purposes, and that upon her death in 1898, the plaintiffs, as her heirs, succeeded to her rights. The evidence shows that Margaret Sloan received an allotment of 320 acres in the Nemaha reservation, which debarred her from claiming a further allotment.

Furthermore, Margaret Sloan never obtained a patent, or certificate conveying to her a title to a specific piece of land. Even though it might be true that she had, as a member of the Omaha tribe an interest in the tribal land, that interest did not confer upon her heirs, the right to demand the conveyance to them of this specific tract. In section 6 of the act of 1882, it is declared that the law with respect to descent in force in the State of Nebraska shall apply to the lands after patents therefore have been executed and delivered. Until a patent, confirming a previous selection has been executed and delivered, the lands included therein would remain part of the tribal property, so far as the right of inheritance is concerned, and as I view the situation, Margaret Sloan, at the date of her death, was not vested with the title to the land she was occupying, in such sense that her death devolved or vested any title thereto in her heirs, but the land remained part of the tribal property.

420 Under these circumstances plaintiffs have failed to show a right to or title in the land claimed by them and their bill must be dismissed on the merits and at their cost.

No. 175. GARRY P. MYERS.

Being of mixed blood, and a resident of the reservation in 1882, Myers is entitled to an allotment and his right thereto is not seriously questioned by the department, but the debateable point in the case is, as to the amount to which he is entitled. It is averred in the answer in this case that Myers claimed to have selected the land for allotment in 1892, he being then a single man, of about eighteen years of age and therefore he is entitled to 80 acres only.

The stipulation of facts in the case shows that Myers, by marriage, became the head of a family on March 5, 1893, and that he entered upon the occupancy of the quarter section claimed by him in the spring of 1894. I do not find in the record any evidence to sustain the averment in the answer that Myers made his selection in 1892, and under the facts stated in the stipulation it must be held that he made his selection in the spring of 1894, at which time he was the head of a family and entitled to an allotment of 160 acres. The evidence further shows that Myers had occupied and improved the 160 acres by him selected in such sense that under the provisions of section 5 of the act, he is entitled to be preferred over any other claimant and the allotment of 80 acres of the land in question to Taeupa Webster was therefore an error on part of the agent, Myers being entitled to the whole quarter section.

A decree in this case will therefore be entered establishing Myers' right to the 160 acres described in the bill.

In all the other cases submitted to the court, being Nos.
421 265, 266, 267, 268, 269, 362, 363, 364, 365, 460, 461, 462, 502, 503, 504, 505, 506, 507, 508, 509, 574, and 579, docket "T," the several plaintiffs therein have failed to show themselves entitled to the benefit of the allotment provisions of the act of 1882, as construed in the foregoing opinion, and therefore in each case a decree will be entered dismissing the bill on its merits, at the cost of the plaintiff therein.

Endorsed: Filed Oct. 3, 1902. Geo. H. Thummel, clerk.

422 Thereupon afterwards, to-wit:—at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal No. 1 of said court to-wit:

JOHN M. SLOAN, ARTEMESIA FROST, and THOMAS L. SLOAN, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Doc. "T," No. 174. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainants. It is therefore,

Ordered, adjudged and decreed that the injunction heretofore granted herein, be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant-, taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8, 1902, Geo. H. Thummel, clerk.

423 Thereupon afterwards, to-wit: on the 13th day of October, 1903, an assignment of errors was filed in said case, which said assignment of errors is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas Sloan, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Defendants.

Docket T, No. 174. Assignment of Errors.

Comes now the complainants in the above entitled cause and assign the following errors in the record and proceedings in said cause as follows:

First. The court erred in finding and determining that Margaret Sloan received an allotment of land in the Nemaha reservation and was for that reason debarred from claiming a further allotment upon the Omaha reservation.

Second. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, made July 15, 1830, a- meaning and intending that the taking of an allotment of land by a member of such tribe pursuant to article 10 of said treaty thereby extinguished the claim of such Indian to further allotment

of land or further allotments or benefits in the tribal property as a member of such tribe.

424 Third. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, of u · 15, 1830. as meaning and intending that half-breed members of the tribe who secured allotments of land in severalty in the Nemaha reservation under the terms of said treaty are not entitled to a second allotment under the act of 1882, although at the time of its passage they were residing on the reservation in the tribal relation.

Fourth. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Fifth. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Sixth. The court erred in holding that the complainants were not members of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Seventh. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

425 Eighth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Ninth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Tenth. The court erred in adjudging and determining that Margaret Sloan at the date of her death was not vested with the title to the land she was occupying in such sense that her death devolved or vested any title thereto in her heirs.

Eleventh. The court erred in holding and determining that Margaret Sloan at the time of her *h*eath was not entitled to claim and have allotted to her the land described in plaintiff's bill of complaint, to-wit: the south-west quarter of the north-east quarter, and the south-east quarter of the north-west quarter of section thirty-five (35), township twenty-five (25) north of range seven (7) east, and the north half of the north-east quarter of section twenty (20)

township twenty-four (24) north of range eight (8) east and that such described property did not vest in complainants, the heirs at law of said Margaret Sloan, at the time of her death.

Twelfth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainants.

426 Thirteenth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainants.

Wherefore, complainants pray that said decree be reversed and that complainants be restored to all things lost by reason thereof.

JOHN M. SLOAN,
ARTEMESIA FROST,
THOMAS L. SLOAN,
Complainants,
By THOMAS L. SLOAN &
CHAS. E. CLAPP,
Their Attorneys.

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

427 Thereupon, to-wit: on the said 13th day of October, 1903, a petition for appeal was filed in said case, which said petition is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, ARTEMESIA FROST, and Thomas L. Sloan, Complainants, *v.* THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Megretahe Grant, John Grant, and Charles Grant, Defendants.	Docket T, No. 174. Petition for Appeal.

Comes now the complainant- in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant- alleges, grievous injury to *this* complainant-, and complainants conceived themselves to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainants further show to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

428 Wherefore complainants pray for the allowance of an appeal in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

JOHN M. SLOAN,
ARTEMESIA FROST,
THOMAS L. SLOAN,
Complainants.,
By THOMAS L. SLOAN &
CHARLES E. CLAPP,
Their Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

Thereupon to-wit: on the 13th day of October, 1903, a bond was filed in said case, which said bond is in the words and figures following, to-wit:

429 174, T.

Know all men by these presents, that we, John M. Sloan, Thomas L. Sloan & Artemesia Frost are held and firmly bound unto the United States of America, John Grant & Me gre ta ha Grant in the full and just sum of one hundred dollars to be paid to the said The United States of America John Grant Me gre ta ha Grant heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between John M. Sloan, Thomas L. Sloan and Artemesia Frost plaintiff- and The United States of America John Grant and Me gre ta ha Grant defendant- decree was rendered against the said John M. Sloan, Thomas L. Sloan and Artemesia Frost and the said John M. Sloan, Thomas L. Sloan and Artemesia Frost has obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The United States of America John Grant Me gre ta ha Grant citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said John M. Sloan Thomas L. Sloan & Artemesia Frost shall prosecute said appeal to effect, and answer all costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

JOHN M. SLOAN. [SEAL.]
ARTEMESIA FROST & [SEAL.]
THOMAS L. SLOAN. [SEAL.]
JOHN H. KUHN.
——— ———.

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

430 Thereupon afterwards, to-wit: on said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 27th, 1903, with proof of service attached thereto, the following of which is the original:

430*a* The United States of America to The United States of America, Charles P. Mathewson, Megratahe Grant, John Grant, and Charles Grant, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein John M. Sloan, Artemesia Frost and Thomas L. Sloan are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2013.—No. 174. United States circuit court, district of Nebraska. John M. Sloan *et al. vs.* United States *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

430*b* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Charles P. Mathewson, Megratahe Grant, John Grant and Charles Grant by handing to and leaving a true and correct copy thereof with John L. Webster their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN D. MOORE, *Deputy.*

430*c* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon The United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

431 Thereupon afterwards, to-wit: on the 10th day of May 1901, amended complaint was filed in said case, which said amended complaint is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

JOSEPHINE MITCHELL, Complainant, *vs.* THE UNITED STATES OF AMERICA, Charles P. Mathewson, Nellie Reese, Minor; Nungthae Thae Reese, Defendants.	No. 265, T. Amended Bill of Complaint.

To the honorable the judges of the said court:

Josephine Mitchel brings this her bill of complaint against the United States of America, and thereupon your oratrix complains and states that she is a member of what is, or until recently was known, as the Omaha tribe of Indians of Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and in the treaties hereinafter set forth. That she is of what is known as mixed blood and is a lineal descendant from one Michael Barada who intermarried with one Taegleha Haceineda, an Indian woman of the said tribe. That your oratrix and her ancestors back to said Michael Barada and his said wife, have continually maintained their domicile with the said tribe and maintained tribal relation- therewith so long and so far as any tribal relations have been maintained by the said tribe, and has participated in the property and other rights of the said tribe, and been recognized by the said tribe and the members thereof as a member of the said tribe and entitled to all its rights and privileges.

432 And further complaining your oratrix says: That on the 16th day of March A. D., 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof they received their present reservation and certain sums of money paid *pro rate* to the individual members of the tribe including Euphrasia Peters. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large vol. 10 page 1043 to which for greater certainty your oratrix refers.

And your oratrix further says that on the 6th day of March A. D., 1865 another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large vol. 14 page 667 to which for greater certainty your oratrix begs to refer.

And further showing your oratrix says; that on the 7th day of August A. D., 1882 an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one-quarter of a section, to each person over eighteen years of age one-eighth of a section, to each orphan child one-eighth of a section, to each other person under eigh-
433 teen years of age one-sixteenth of a section. That all allotments should be selected by the Indians, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22 page 341 to which for greater certainty your oratrix refers.

Your oratrix further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act on December 1884 and at subsequent times since.

Your oratrix further shows that on the 3rd day of March, A. D., 1893 an act of Congress was passed amending or extending the act of August 7th, 1882 providing that with the consent of the Omaha tribe of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882, were not superceded by the act of March 3rd 1893, but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council May 1899 and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs, that the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimants.

And your oratrix further shows that she is a daughter of
434 Euphrasia Peters who is a daughter of Antoine Barada, who in turn was a son of Michael Barada and Taegleha Haceineda who was as hereinbefore set forth, an Omaha Indian woman and a member of said tribe, that ever since the year 1885 she has continuously resided upon the Omaha reservation. That your oratrix first selected land in the year 1887 and was upon the reservation at the time the Omahas consented to accept the act of 1882.

That your oratrix selected as the head of a family the following described lands, to-wit: The S. ½ of S. W. ¼ of section 35 and the S. W. ¼ of N. E. ¼ and the S. E. ¼ of N. W. ¼ of section 34 township 25 N. range 7 east of the 6th P. M. in Nebraska. That your oratrix

has improved and is farming said land having made valuable improvements there to the value of $2090.00 at least. That the land when selected by your oratrix was wild, unimproved and unclaimed land. That your oratrix is a member of the Omaha tribe by blood and descent and accordingly to the law, customs and rules of the Omaha tribe. That such membership has not been terminated and your oratrix has been refused an allotment.

That since the commencement of this action under authority of the act of 1893, March 3rd to which the Omaha tribe consented in May 1899 a part of the land of your oratrix has been assigned. The S. W. of N. E. ¼ section 34 to Nellie Reese a minor and the S. E. of N. W. ¼ section 34 to Nungthae Thae Reese, and for which trust patents in the name of the United States have issued April 11, 1900.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land to place in possession the allottee or lessee and "that he
435 threatens to place into possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainant who is now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land on controversy and his threats that he will remove your oratrix from the land make him a necessary party to this suit. And your oratrix further shows to your honors that by an act of Congress approved the 15th day of August 1894, it was provided that all persons who are in whole or in part of Indian blood or descent, who are entitled to allotment of land under any act of Congress, or who claims to be so entitled under any allotment act or any grant made by Congress, may commence prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor or any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305 which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your oratrix begs to refer.

Your oratrix further states, that the defendant The United States of America claims that by virtue of the 4th art. of the treaty
436 of March 6th, 1865, it was provided that the assignment — be made in limited quantities from the lands held by said tribe

in common to the individual members thereof was confined to the members thereof of full blood "including their half breed and mixed blood relatives now residing with them," and the defendant claims that your oratrix and her ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th 1865, and the subsequent act of Congress of August 7th, 1882. Your oratrix admits that she and her ancestors were temporarily absent from the reservation at the time but claims that such absence did not deprive them of the right of residence on the reservation nor the rights of allotment under the treaty of March 6th, 1865, nor their rights to allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art., of the treaty of March 6th, 1865 *as* certified to by the chiefs and headmen of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th 1871, and contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th 1865 nor at the time of making the schedule referred to; that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882 who were not residing on the Omaha reservation at the time of making the treaty of
437 March 6th 1865 nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent, the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resides on the reservation but who at all times and at the time of the treaty of March 6th 1865 and ever since resided -way from the reservation.

Your oratrix further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art., of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your oratrix further states that the defendant, The United States claims that the complainant or her ancestor has received allotments of land under and by virtue of the treaty of July 15th, 1830, and 10th art., thereof and by the acceptance of said allotment under the policy of the Indian office neither the complainant nor Euphrasia Peters her ancestor are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your oratrix admits that her ancestors received an allotment of land

under the provisions of the 10th art., of the treaty of July 15th, 1830 as a half breed member of the Omaha tribe of Indians that the quantity so assigned was one-half the amount provided by said treaty and that the said allotment was not accepted by her
438 nor given to her in consideration of the relinquishment of any other right than those to which she was entitled on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art., of the treaty of July 30th, 1830, sums of money, which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th 1830, have received assignments of land on the present reservation under the 4th art., of the act of the 6th of March 1865 and the subsequent act of Congress of August 7th, 1882; that your oratrix has not in any manner assigned or relinquished her right or claim to the benefit under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Government nor by the enactment of any law authorized this complainant or her ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complain-t or any member of her tribe has been accepted or approved by the United States or any of its officers.

Wherefore your oratrix shows to your honors that she is without a remedy at law and remediless in the premises unless relieved by your honor in this court of equity and *they* therefore pray- the aid of the court in the premises and that said defendants, The United States of America, Charles P. Mathewson, Nellie Reese by her
439 next friend Thomas Reese and Nungthae Thae Reese may answer your oratrixs' bill, but without oath, answer under oath being expressly waived. That it be ordered and decreed that the patents issued to Nellie Reese and Nungthae Thae Reese are null and void and that the selection as made by Josephine Mitchell for herself is prior and superior to their claim and is her allotment and that she is entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your oratrix further prays for a preliminary order of injunction against the defendants Charles P. Mathewson, Nellie Reese and Nungthae Thae Reese enjoining and restraining each of them, their agents and employees from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your oratrix the most gracious writ of subpœna to be issued under the seal of this court direct to the United States of America, Charles P. Mathewson, Nungthae Thae Reese and Nellie Reese by her next friend Thomas Reese therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHAS. E. CLAPP, *Of Counsel.*

Endorsed: Filed May 10 1901 Geo. H. Thummel, clerk.

440 Thereupon afterwards, to-wit: on the 2nd day of July, 1901, answer was filed in said case, which said answer is in words and figures following, to-wit:

JOSEPHINE MITCHELL, Complainant, *vs.* THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Nellie Reese, Minor; Nungthae Thae Reese, Defendants.	No. 265, Doc. T. Answer to Amended Bill of Complaint.

The answer of the United States of America, Charles P. Mathewson, Nellie Reese, and Nungthae Thae Reese, defendants, to the amended bill of complaint of Josephine Mitchell, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer, say:

1. These defendants deny that Josephine Mitchell is an Omaha Indian, and deny that Josephine Mitchell is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary these defendants aver that the said Josephine Mitchell is a white woman and a citizen of the United States, and that her ancestors were white persons and citizens of the United States, and
441 that her said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that Josephine Mitchell or her ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the

benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

These defendants for further answer aver that Josephine Mitchell, complainant, claims to trace her lineage back to Michael Barada, who had intermarried with an Indian woman by the name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe and therefore leaves the complainant to her proof in that regard.

That there was born to said Michael Barada and his wife, in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Lous with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Anotoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife
442 Josephine Vien continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years, until some time after the approval act of Congress of August 7, 1882 (22 U. S. Statutes at Large 341) hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Euphrasia (the mother of this complainant), and the said Euphrasia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians and lived in the city of St. Louis, and was never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Euphrasia Barada, so being a white woman and a citizen of the United States, married a white man named Fulton Peters, a white man of German nationality and a citizen of the United States. There was born to the said Fulton Peters and his wife Euphrasia, a daughter named Josephine, who is the complainant herein, and the said Josephine, being such white person and citizen of the United States taking the status of her father, continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when

she came to the Omaha reservation with her parents, with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that Josephine did not live with the Omaha tribe of Indians on the reservation at the time of treaty of 1865, or the approval of the act of Congress 1882; that by the terms of article 4, of the treaty of 1865,
443 (14 U. S. Statutes at Large, 667) the assignment of lands in severalty only included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Josephine being only one-sixteenth Indian blood and she not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882 (22 U. S. Statutes at Large p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said Josephine Mitchell was not residing on the Omaha Indian reservation and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which
444 said schedule did not contain the names of Josephine or her ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither Josephine nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say; that in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontanelle and others, being members of the Omaha tribe of Indians were respondents, that made claim that he had received annuity money. It was agreed

between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainant- in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886 and June 22, 1887, December 3, 1887 February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemisia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors, or any of the immediate antecedants or descendants of said parties, so far as I know their names,"
445 and which said report is a matter of record in this court, and binding upon the parties thereto, including these complainants. That the said Antoine Barada was the grandfather of this complainant, and the said Euphrasia Peters and Fulton Peters were the parents of this complainant, and Frank Peters and Walter Peters and Mary Sailors were brothers and sisters of complainant.

4. These defendants further answering say; that after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts of the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation and said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. "The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with
446 the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding

the cases of the ansentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family:

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half breed; that she was born of a white mother (French) in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865 (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections. Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Juhn (formerly Barada) appears on said
447 schedule, and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around in that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians.

Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant and the action of the department thereon.

448 The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case. The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half breed Omaha, who has lived all his life apart from the Omahas. Antoine married a French woman and his children were born and reared in St. Louis. Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half breed Nemaha reserve. Mrs. Peters' portion has dwindled down to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter and did service in St. Louis and on the Mississippi river for the Government during the war. He has excellent credentials as to character, and so has his wife.

Article 4 of the treaty of 1865 defines those entitled to lands to be 'the members of the tribe including their half breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilmen incline to insist upon a strict construction of this article. 4.

Since my arrival, a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the

449 council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there. This objection is a serious one, and I know it to be well taken by many persons' field observation. The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation, and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them

at the date of their treaty of 1865, whose names were borne upon the duly certified census roll of 1871, or their descendant-, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. This defendant further avers that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit, William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

450 SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land. There is a man named Frank Peters, who, although he has Indian blood in him is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We knew that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8 and broke 40 acres. We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off. We have asked to have him sent away, but nothing has been done. This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land. We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe, shall be held just as safe as our individual land.

451 If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept

safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands. Some of the tribe did not listen to good advice when our reservation was allotted. They thought they could not live away from the timber out on prairie; but they see their mistake now; their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so. If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterward on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

452 Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865 (14 Statutes 668) was made. The 4th article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. submitted by the Omaha council which is represented to contain the names of all Indians or

mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood
453 relation- residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. This defendant further avers that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and Walter Peters and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation and upon their failure so to remove, said Indian agent was
454 to report such facts to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Frank Peters, William Barada, Luke Sailors and Walter Peters. to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians, then in the city of Washington,

the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested *that* the Hon. Secretary of War to cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Frank Peters, Luke Sailors and Walter Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as he was of that class.

This defendant further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters, and Mrs. Sailors and their families belong to a class of trespassers on the Omaha reservation, and are not entitled to land or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not
455 be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontanelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th, of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. These defendants for further answer avers that under article 10, of the treaty of July 15, 1830 (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5 (4) of an act of Congress approved July 31, 1854 (10 U. S. Statutes at Large, 332) a patent was issued to Euphrasia Peters for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which

treaty of 1830, and the said act of Congress of 1854, the rights of Euphrasia Peters and her descendants including Josephine Mitchell, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

456 These defendants for further answer deny that Josephone Mitchell the complainant, is the head of a family and denies that she is entitled to an allotment of 160 acres of land, and denies that Josephine Mitchell ever occupied or improved any of the land in section 24, township 25, north range 7, E., described in her amended bill of complaint, and the defendants aver that the lands occupied by the Mitchell family is confined to the S. half of the S. W. quarter of section 35 and these defendants aver that the U. S. allotting agent has reserved for Josephine Mitchell pending this litigation, the S. half of the S. W. quarter of section 35, township 25, range 7 E., being eighty acres of the land described in her amended petition, and which said reservation has been noted upon the surveyed maps in the office of Commissioner of Indian Affairs, awaiting the final determination of this suit. These defendants further aver that the United States allotting agent appointed by the Interior Department to investigate selections and to make allotments of land, ascertained and found as a fact that Josephine Mitchell was not head of a family on the date of the approval of the act of Congress of August 7, 1882, under which the complainant claims the right to an allotment, and did not at said date, nor at any other time, occupy the lands described in section 34, township 25, north range 7 E., and further found that the said Josephine Mitchell was not entitled to an allotment of any lands whatsoever, and which said finding and report has been approved by the Interior Department.

That said United States allotting agent did find upon investigation that Nellie Reese had selected and had a superior right and claim to an allotment of the S. W. quarter of the N. E. quarter of said section 4, and that Nungthae Thae Reese had selected

457–460 and had a better and superior claim to the S. E. quarter of the N. W. quarter of said section 34, township 25, north range 7 E., and the said United States allotting agent did make to the said Nellie Reese and Nungthae Thae Reese respectively, an allotment thereof and thereafter made his official report to the Commissioner of Indian Affairs; that the said Nellie Reese and the said Nungthae Thae Reese were entitled to the lands so allotted to them respectively above described and which said allotments were subsequently approved by the Commissioner of Indian Affairs and by the Secretary of the Interior, and patents therefore had been issued to the said Nellie Reese and Nungthae Thae Reese respectively, under date of April 11, 1900, and which said allotments were made and the said patents issued in the regular and due course of business.

And these defendants further aver that the complainant herein did not have any prior or superior or vested right to the lands so patented to Nellie Reese and Nungthae Thae Reese, and that the said

allotments to them, and the said patents to them were made in all respects in conformity to law.

10. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, is not true to the knowledge or belief of these defendants and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complaint demanded. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
United States Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 2 1901 Geo. H. Thummel, clerk.

461 Thereupon, afterwards, to-wit: on the 21st day of August 1902 stipulation of facts was filed in said case, which said stipulation is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOSEPHINE MITCHELL, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Nellie Reese, Minor; Nungthae Thae Reese, Defendants.

Doc. T, No. 265.
Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the complainant, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Walter Mitchell, the husband of Josephine Mitchell, will testify that Josephine Mitchell first made claim in the year 1894, to the S. W. ¼ of the N. E. ¼ of section 34 (allotted to Nellie Reese) and the S. E. ¼ of the N. W. ¼ of section 34, township 25, range 7 (allotted to Nungthae Thae Reese). The claim was made by cutting hay on the land. Thomas L. Sloan made the record of the claim at the agency in 1895. At that time there was a fence around the land which had been built by Thomas L. Sloan. Thomas L. Sloan subsequently sold the fence. There is no fencing on the land now, nor any improvements excepting the growing crops of corn and flax. About one-half of said land is in cultivation, perhaps a little more.

5

462 Walter Mitchell will further testify that he was married to Josephine in Richardson county, State of Nebraska in the year 1891. That Josephine had come to the Omaha reservation in the year 1883, and had gone back same year to Richardson county Nebraska, with her father and mother (1883).

That Walter Mitchell and Josephine Mitchell (husband and wife) came to the Omaha Indian reservation to live in the year 1892, and have lived on the reservation since that time.

Thomas L. Sloan will testify that when he fenced the land for pasture there were no marks by plowing. That he and Walter Peters surveyed it in 1890 as a claim for the Peters children, they being Jacob Peters, Josephine Peters and Walter Peters. That Sloan was county surveyor at the time. That no plowing was made on this land until the late summer of 1893. That it was plowed by many claimants. That the first person to plow around it was Walter Morris.

In the Circuit Court of the United States for the District of Nebraska.

JOSEPHINE MITCHELL, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Nellie Reese, Minor; Nungthae Thae Reese, Defendants.

Doc. T, No. 265.
Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

463 William Springer will testify that the lands which have been allotted to Nungthae Reese and Nellie Reese in section 34, township 25, range 7, claimed to have been selected by Josephine Mitchell in 1895, had been plowed around before that date and the furrow marks were then plainly visible, but that he does not know personally who had marked out the land by plowing around it.

Thomas Reese will testify that he is the father of Nellie Reese and Nungthae Thae Reese, and that Nellie Reese is living and that Nungthae Thae Reese died about four years ago.

That he (Thomas Reese) made claim for his children, 13 years ago, to the land allotted to Nungthae Thae Reese (being the S. E. ¼ of the S. E. ¼ of section 34), and to the land allotted to Nellie Reese, being the S. W. ¼ of the N. E. ¼ of section 34, township 25, range 7 (being part of the land claimed by Josephine Mitchell in her amended bill of comlaint).

And that he plowed around the land at that time (13 years ago) but made no other improvements upon the land. He cannot state

what year it was he plowed around the land, but thinks it was about 13 years ago. He leased the land to Mr. Hutchens, one year ago this spring (being the spring of 1900).

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

464 Thereupon afterwards, to-wit: on the 22nd day of September, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

JOSEPHINE MITCHELL
v.
UNITED STATES OF AMERICA ET AL. } No. 265, Doc. T.

The Replication of Josephine Mitchell, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant, saving and reserving to herself all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants for replication thereunto saith, that she doth and will aver, maintain and prove her said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

THOMAS L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902, Geo. H. Thummel, clerk.

465 Thereupon afterwards, to-wit: at the May 1902 term of said court and on the 8th day of November 1902, the following decree was signed and filed in said case and entered of record on the journal of proceedings of said court, had on said day, to-wit:

JOSEPHINE MITCHELL, Complainant,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Nellie Reese, Minor; Nungthae Thae Reese, Defendants.
Doc. T, No. 265. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find, upon the merits of the case for the defendants and against the complainant. It is therefore,

Ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

466 Thereupon afterward, to-wit: on the 13th day of October, 1903, an assignment of errors was filed in said case, which said assignment of errors is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOSEPHINE MITCHELL, Complainant,
vs.
THE UNITED STATES OF AMERICA, Nellie Reese, Nung Thae Thae Reese, and Charles P. Mathewson, Defendants.
Docket T, No. 265. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

467 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Josephine Mitchsell was not entitled to claim and have allotted to her the land described in plaintiff's bill of complaint, to-wit: The south half of the south west quarter of section thirty-five (35), the south west quarter of the north east quarter, and the south east quarter of the north west quarter of section thirty-four (34) all in township twenty-five (25), north of range seven (7), east.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

468 Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

JOSEPHINE MITCHELL,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

Endorsed: Filed Oct. 13, 1903. Geo. H. Thummel, clerk.

469 Thereupon afterwards, to-wit: on the said 13th day of October, 1903, a petition for appeal was filed in said case, which said petition is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOSEPHINE MITCHELL, Complainant, *vs.* THE UNITED STATES OF AMERICA, Nellie Rees-, Nung Thae Thae Reese, and Charles P. Mathewson, Defendants.	Docket T, No. 265. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November. 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives herself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

470 Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

JOSEPHINE MITCHELL,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

Thereupon, to-wit: on the said 13th day of October, 1903, a bond was filed in said case, which said bond is in the words and figures following, to-wit:

471 265, T.

Know all men by these presents, that we, Josephine Mitchell — Lot Sailors are held and firmly bound unto The United States of America Nellie Reese Nungthes Thea Reese in the full and just sum of one hundred dollars to be paid to the said The United States of America Nellie Reese Nungthea Thea Reese heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Josephine Mitchell plaintiff and The United States of America Nellie Reese Nungthea Thes Reese defendant judgement was rendered against the said Josephine Mitchell and the said Josephine Mitchell has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America Nellie Reese Nungthea Thes Reese citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Josephine Mitchell shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

JOSEPHINE MITCHELL. [SEAL.]
LOT SAILORS. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

472 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

473 The United States of America to the United States of America, Nellie Reese, Nung Thae Thae Reese, and Charles P. Mathewson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Josephine Mitchell is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2012. No. 265 United States circuit court, district of Nebraska. Josephine Mitchell *vs.* United States, *et al.* Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

473a Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Nellie Reese, Nungthaethae Reese, and Charles P. Mathewson, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney personally at Omaha in said district on the 21 day of Oct. A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

473b UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the

same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

474 Thereupon afterwards, to-wit: on the 28th day of November 1898, an amended bill was filed in said case, which said bill is in the words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

To the honorable the judges of the said court:

Emiel Peters, brings this his bill of complaint against The United States of America, and thereupon your oratrix complains and says that the matter in dispute herein exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arises under the Constitution and laws of the United States and under certain treaties made under their authority as hereinafter more specifically set forth.

Further your orator says that he is a member of what is or until recently was known, as the Omaha tribe of Indians of Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and in the treaties hereinafter set forth. That he is of what is known as mixed blood and is a lineal descendant from one Michael Barada who intermarried with one Taegleha Hacieneda, an Indian woman of the said tribe. That your oratrix and his ancestors back to said Michael Barada and his said wife, have continually maintained their domicile with the said tribe and maintained tribal relations therewith so long and so far as any tribal relations have been maintained by the said tribe, and has participated in the said property and other rights of the said tribe and been recognized by the said tribe and the members thereof as a member of the said tribe and entitled to all its rights and privileges.

475 Further complaining your oratrix says that on the 16th day of March, 1854, a certain treaty was entered into by and between the United States and the Omaha tribe of Indians wherein and whereby the said tribe ceded unto the United States

certain land situated in what is now known as the State of Nebraska, south of what has recently been known as the Omaha reservation, and in consideration of the session of the said land, the United States agreed to pay and did pay unto the said Omaha tribe of Indians certain annuities for a certain period of years as set forth in said treaty, and agreed to perform in addition thereto certain covenants all of which is more fully set forth in the said treaty in the words and figures following, to-wit:

Article 1. The Omaha Indians cede to the United States all their lands west of the Missouri river, and south of a line drawn due west from a point in the centre of the main channel of said Missouri river due east of where the Aoway river disembogues out of the bluffs, to the western boundary of the Omaha country, and for ever relinquish all right and title to the country south of said line.

Article 3. The Omahas relinquish to the United States all claims for money or other thing, under former treaties, and likewise all claims which they may have heretofore, at any time, set up, to any land on the east side of the Missouri river, provided, the Omahas shall still be entitled to and receive from the Government, the unpaid balance of the twenty-five thousand dollars appropriated for their use, by the act of thirtieth of August, 1851.

Article 4. In consideration of and payment for the country herein ceded, and the relinquishments herein made, the United States agree to pay to the Omaha Indians, the several sums of money following to-wit:

476 1st. Forty thousand dollars per annum, for the term of three years commencing on the first day of January, eighteen hundred and fifty five.

2nd. Thirty thousand dollars per annum, for the term of ten years next succeeding the three years.

3rd. Twenty thousand dollars per annum for the term of fifteen years next succeeding the ten years.

4th. Ten thousand dollars per annum, for the term of twelve years next succeeding the fifteen years.

All which several sums of money shall be paid to the Omahas, or expended for their use and benefit, under the direction of the President of the United States, who may from time to time determine at his discretion, what proportion of the annual payments, in this article provided for, if any, shall be paid to them in money, and what proportion shall be applied to and expended for their moral improvement and education.

In addition to the foregoing covenants and agreements others are set forth in said treaty.

And your orator further says that among other things in said treaty set forth, it was provided by article six as follows:

Article 6. The President, may from time to time at his discretion, cause the whole of such portion of the land hereby reserved, as he may think proper, or of such land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign

to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one-half section; to each family of six, not exceeding ten, one section; and to each family over ten in
477 number one quarter section for each additional five members. And he may prescribe such rules and regulations as will ensure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may at any time in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale or forfeiture.

All of which matters and things, together with other matters and things, more fully and at large appear in the said treaty as published under authority of the United States in the Statutes at Large, vol. 10, page 1043, to which for greater certainty your orator herein begs leave to refer.

And your orat*rix* further says that on the sixth day of March, 1865, the said United States made and entered into a further treaty with said tribe wherein and whereby, among other matters and things the following matters and things were in said treaty set forth in the words and figures following, to-wit:

Article 1st.

The Omaha tribe of Indians do hereby sell, cede and convey to the United States a tract of land from the north side of their present reservation, defined and bounded as follows—commencing at a point on the Missouri river four miles due south from the north boundary line of said reservation, thence west ten miles, thence south four miles, thence west to the western boundary line of the reservation, thence north to the northern boundary line, thence east to
478 the Missouri river, and thence south along the river to the place of beginning; and that said Omaha tribe of Indians will vacate and give possession of the lands ceded by this treaty immediately after its ratification.

Article 2nd.

In consideration of the foregoing cession the United States agree to pay to the said Omaha tribe of Indians the sum of fifty thousand dollars, to be paid upon the ratification of this treaty, and to be expended by their agent, under the direction of the Commissioner of Indian Affairs, for goods, provisions, cattle, horses, construction of buildings, farming implements, breaking up lands, and other improvements on their reservation.

In addition to the foregoing covenants and agreements other covenants and agreements are set forth in said treaty.

And your oratrix says that among other things in said treaty set forth, it was provided by article fourth, as follows:

Article 4th.

The Omaha Indians being desirous of promoting settled habits of industry and enterprise amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, including their half or mixed blood relatives now residing with them, to be cultivated and improved for their own individual use and benefit, it is hereby agreed and stipulated that the remaining portion of their present reservation shall be set apart for such purposes; and that out of the same there shall be assigned to each head of a family not exceeding one hundred and sixty acres, and to each male person, eighteen years of age and upwards without family, not exceeding forty acres of land—to include in every case as far as practica-
479 ble, a reasonable proportion of timber, six hundred and forty acres of said lands, embracing and surrounding the present agency improvements, shall also be set apart and appropriated to the occupancy and use of the agency for said Indians. The lands to be so assigned, including those for the use of the agency, shall be in as regular and compact a body as possible, and so as to admit of a well defined and distinct exterior boundary. The whole of the lands, assigned, or unassigned, in severalty, shall constitute and be known as the Omaha reservation within and over which all laws passed or which may be passed by Congress regulating trade and intercourse with the Indian tribes shall have full force and effect, and no white person, except such as shall be in the employ of the United States, shall be allowed to reside or go upon any portion of said reservation without the written permission of the superintendent of Indian affairs or the agent for the tribe. Said division and assignment of the lands to the Omahas in severalty shall be made under the direction of the Secretary of the Interior, and when approved by him, shall be final and conclusive. Certificates shall be issued by the Commissioner of Indian Affairs for the tracts so assigned, specifying the name of the individuals to whom they have been assigned respectively, and that they are for the exclusive use and benefit of themselves, their heirs and descendants; and said tracts shall not be aliened in fee, leased or otherwise disposed of, except to the United States, or to other members of the tribe, under such rules and regulations as may be prescribed by the Secretary of the Interior, and they shall be exempt from taxation, levy, sale or forfeiture, until otherwise provided for by Congress.

All of which matters and things together with other matters
480 and things, more fully and at large appear in the said treaty as published under the authority of the United States in the

Statutes at Large, in vol. 14, at page 667, to which for greater certainty your orator begs leave to refer.

And your orator further says that by act of Congress, approved the 7th day of August, 1882, entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska, and for other purposes" it was among other things provided as follows:

That with the consent of said tribe expressed in open council the Secretary of the Interior should be authorized to cause to be surveyed if necessary, and sold, all that portion of the said Omaha reservation lying west of a certain right of way theretofore granted to the Sioux City and Nebraska Railroad Company in 1880; that said lands be appraised in tracts of forty acres each by three competent commissioners; that thereupon the Secretary of the Interior was authorized to issue a proclamation to the effect that the unallotted lands are open for settlement under such rules and regulations as he should fix; that within one year after the date of such proclamation each *bona fide* settler complying with the requirements set forth in said act, and having made valuable improvements thereon should be entitled to purchase not to exceed one hundred and sixty acres of said land according to the survey and appraised value; that said sale was for cash or three cash payments in one, two and three years, in no case to be less than two dollars and fifty cents per acre.

Section three. That the proceeds of such sale, after paying all expenses incident to and necessary for the carrying out of said
481 act, including such clerk hire as the Secretary of the Interior may deem necessary, shall be placed to the credit of the said Indians in the Treasury of the United States, and shall bear interest at the rate of five per centum per annum, which income shall be annually expended for the benefit of said Indians, under the direction of the Secretary of the Interior.

Said act further provides for the issuing of patents by the United States to those who have complied with the provisions of said act.

Section five. That with the consent of said Indians as aforesaid the Secretary of the Interior be, and he is hereby, authorized, either through the agent of said tribe or such other person as he may designate to allot the lands lying east of the right of way granted to the Sioux City and Nebraska Railroad Company, under the agreement of April nineteenth, eighteen hundred and eighty, approved by the acting Secretary of the Interior, July twenty-seventh eighteen hundred and eighty, in severalty to the Indians of said tribe, in quantity as follows: To each head of a family, one quarter of a section; to each single person over eighteen years of age, one eighth of a section; to each orphan child under eighteen years of age one eighth of a section; and to each person under eighteen years of age, otherwise, one sixteenth of a section; which allotments shall be deemed and held to be in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas concluded March sixth, eighteen hundred and sixty-five, and for which

for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided: Provided, that any Indian to whom a tract of land has
482 been assigned and certificates issued, or who was entitled to receive the same, under the provisions of said fourth article, and who has made valuable improvements thereon, and any Indian who being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract, shall have a preference right to select the tract upon which his improvements are situated for allotment under the provisions of this section; provided further, that all allotments made under the provisions of this section shall be selected by the Indians, heads of families selecting for their minor children, and the agent shall select for each orphan child; after which the certificates issued by the Commissioner of Indian Affairs aforesaid shall be deemed and held to be null and void.

Section six. That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior, he shall cause patents to issue therefore in the name- of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indians to whom such allotment shall have been made, or in case of his decease, of his heirs according to the laws of the State of Nebraska, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs as aforesaid, in fee discharged of said trust and free of all charge or encumbrance whatsoever. And if any conveyance shall be made of any of the lands set apart and allotted as herein provided or any contract made touching the same before the expiration of the time
483 above mentioned, such conveyance or contract shall be absolutely null and void; provided, that the law of descent and partition in force in the said State shall apply thereto after patents therefore have been executed and delivered.

Section seven. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of said tribe of Indian- shall have the benefit of and be subject to the laws both civil and criminal of the State of Nebraska; and said State shall not pass or enforce any law denying any Indian of said tribe the equal protection of the law.

Section eight. That the residue of lands lying east of the said right of way of the Sioux City and Nebraska railroad, after all allotments have been made, as in the fifth section of this act provided, shall be patented to the said tribe of Omaha Indians, which patent shall be of the legal effect and declare that the United States does and will hold the said land thus patented for the period of twenty-five years in trust for the sole use and benefit of the said Omaha

tribe of Indians, and that at the expiration of said period, the United States will convey the same by patent to said Omaha tribe of Indians, in fee discharged of said trust and free of all charge or incumbrance whatsoever; provided, that from the residue of the lands thus patented to the tribe in common, allotments shall be made and patented to each Omaha child who may be born prior to the expiration of the time during which it is provided that said lands shall be held in trust by the United States, in quantity and upon the same conditions, restrictions and limitations as are provided in section six of this act, touching patents to allottees therein mentioned.

But such conditions, restrictions and limitations shall not ex-
484 tend beyond the expiration of the time expressed in the patent herein authorized to be issued to the tribe in common; and provided further, that these patents when issued shall overried the patent authorized to be issued to the tribe aforesaid, and shall separate the individual allotment from the lands held in common, which proviso shall be incorporated in the patent issued to the tribe: Provided that said Indians or any part of them may if they shall so elect, select the land which shall be allotted to them in severalty, in any part of said reservation either east or west of said right of way mentioned in the first section of this act.

All of which matters and things, together with other matters and things, more fully and at large appear in said act, published by the authority of the United States in vol. 22 page 341 of the Statutes at Large to which for greater certainty your orator begs to refer. Your orator further shows that he is the son of Euphrasia Peters, who is the daughter of Antoine Barada, who in turn was the son of Michel Barada and Taegleha Haceineda, who was as hereinbefore set forth, an Omaha Indian woman, and member of the said tribe; that ever since the year *1894* he has continuously resided upon the reservation of the Omaha tribe of Indians; that in the year 1888, your orator took possession of a tract of land on the Omaha reservation, as hereinafter described, having during the year 1888, marked and plowed said tract, and has evdr since taken possession of said tract occupied and cultivated it without objection on the part of the said tribe, and as such member of the tribe under and by virtue of the foregoing treaties and acts of Congress hereinabove described and set forth, occupying and has been occupying ever since the year 1894, the following described lands within and a part of the said reservation, situated in the county of Thurston, and State of
485 Nebraska and within the jurisdiction of this court, to-wit:

The west half of the south-east quarter (W. ½ S. E. ¼) of section thirty-five (35) of township twenty-five (25) north of range seven (7) east of the 6th P. M.; that such last described property is a part of the lands referred to in the treaties and acts of Congress hereinabove set forth, and has been surveyed in accordance with the said treaties and acts of Congress; that your orator has placed valuable and lasting improvements upon the above described premises consisting of fencing, planting of fruit and forest trees, and has

broken and improved the said land from wild prairie, untilled land to a first class condition suitable for agriculture.

And your orator further shows unto your honors, that no other person claims or has claimed the right to said lands so selected and occupied by your orator; that no selection of such land has been made by any other person than your orator and that no certificate of such selection has been issued to any person for said land, nor has any allotment thereof been made by the defendant The United States of America to any person whomsoever, nor has any patent so issued and that the defendant The United States of America, has not opposed and does not oppose the claims of your orator to the said land by reason of such land having been selected or claimed by any other person or having been allotted to any other person.

And your orator further shows that notwithstanding the facts hereinabove set forth, and notwithstanding that he is within and under the provisions of the laws referred to herein, entitled to an allotment of eighty acres of land, for himself, he being a single person over eighteen years of age, the defendant The United States of America, by and through its officers and agents, refuses and neglects to make to your orator the allotment of land to which he
486 is entitled, and that notwithstanding the rights of your orator to such allotments he is now, and has been unlawfully denied the allotment and parcel of land to which he is and claims to be lawfully by virtue of the said treaties and acts of Congress, and in that behalf your orator shows that the said defendant The United States of America notwithstanding the selection of the above described pieces of land by your orator for himself, refuses through the Department of the Interior to approve such selection of land so made by your orator, although your orator has notified the defendant The United States of America, notwithstanding through its proper officers and agents, that he has made such selection as was his right under the said treaties and acts of Congress and that the defendant The United States of America, notwithstanding such selection and notification refused and still refuses to cause the patent to issue for such allotments and selections in the names of and to your orator.

Plaintiff further states that the defendant claims that under and by virtue of the 4th article of the treaty of March 6th, 1865, it was provided that assignments — be made in limited quantities from the lands held by said tribe in common to the individual members thereof, *was* confined to the members of said tribe of the full blood, "including their half and mixed blood relatives now residing with them." And the defendant claims that plaintiff's ancestor Euphrasia B. Peters was not residing on the reservation at that time and therefore is not entitled to land under the 4th article of the tresty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Plaintiff admits that she was temporarily absent from the reservation at that time but claims that such absence did not deprive her of her residence on the reservation and rights to allotment

under the treaty of March 6th, 1865, nor her rights under the subsequent act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States
487 who were appointed to carry the provisions of said treaties and law into effect; that the schedule allotments or assignments made under the 4th article of the treaty of March 6th, 1865, as certified to by the chiefs and head men of Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted to and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior, January 26th, 1871, contained the names of numerous half and mixed blood relatives and members of the Omaha tribe of Indians who were not residing upon the reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the schedule just referred to; that under the provisions of the act of Congress of August 7th, 1882, many half and mixed blood relatives or members of the Omaha tribe of Indians received allotments who were not residing on the reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the schedule in the years 1870, and 1871, and also many half and mixed blood relatives or members of the Omaha tribe of Indians received allotments who were not on the reservation at the times just mentioned and whose names do not appear upon the schedule approved by the Secretary of the Interior June 26th, 1871.

Plaintiff further claims that no new rights were acquired under the treaty of March 6th, 1865, but that the assignment of lands provided for by the 4th article of said treaty of March 6th, 1865, had already been authorized by the treaty of March 16th, 1854, and to which right of assignment all the individual members of said Omaha tribe of Indians were entitled without exception.

Plaintiff further states that the defendant claims that the plaintiff's ancestor Euphrasia B. Peters has received an allotment
488 of land under and by virtue of the 10th article of the treaty of July, 15th, 1830, and that by the acceptance of said allotment under the policy of the Indian office, the plaintiff is not entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians. Plaintiff admits that he received an allotment of land under the provisions of the 10th article of the treaty of July 15th, 1830; as a half-breed member of the Omaha tribe of Indians; that the quantity so assigned to him was one half of the amount provided for by said treaty, and that said allotment was not accepted by him nor given to him in consideration of the relinqushment of any other rights than those to which he was entitled upon the Nemaha half breed reservation; that numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th article of the treaty of July 15th, 1830, sums of money which sums of money were accepted in consideration of all relinquishment to the United States of their interest in and to the deficiency in the half breed

reservation under the provision of the act of Congress, section 6, chapter 66, of the 3rd session of the 35th Congress, 1895. That most of the half breeds who received allotments upon the Nemaha half breed reservation and those who received money in lieu of said allotments have received assignments of lands on the present reservation under the 4th article of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882; that this plaintiff has not in any manner assigned or relinquished her right or claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians; neither has the United States by the executive department of the Government nor by the enact-
489 ment of any law authorized this plaintiff or any of the members of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of any such tribal rights by this plaintiff or any member of said tribe has been accepted or approved by the United States or any of its officers.

Plaintiff further states that at the time of making the treaty of March 6th, 1865, he was a minor and if the requirement as claimed by the defendant as to residence was necessary, it was inapplicable to him because of such fact.

Your orator further shows that in accordance with the laws of the United States the defendant The United States of America had detailed and appointed to the said Omaha tribe of Indians and as agent of the United States of America, over what is known as the Omaha reservation, as hereinabove described, Captain William Mercer, 8th infantry, U. S. A. the regular army of the United States, who is now in charge of the said lands of the Omaha reservation, including those in controversy herein now claimed by your orator, and that the said Captain William A. Mercer is now the person designated by the laws of the United States to superintend and supervise and make allotments of lands to those members or former members of the Omaha tribe of Indians entitled to such allotments under the foregoing treaties and acts of Congress. And that the said Capt. William A. Mercer, and the Secretary of the Interior of the United States, as representing the defendant, refuse and neglect to make to your orator the allotment of land to which he is entitled, and that notwithstanding the rights of your orator in the premises, he is now and has been unlawfully denied the allotment to him, of the said parcels of land which he now claims, and that the defendant refuses to make unto him such allotments and refuses to issue to him a cer-
490 tificate and patent therefore to which he is entitled under the laws and treaties of the United States, notwithstanding the fact that under the said laws and treaties and the practice heretofore prevailing in the allotment of said lands as adopted and pursued by the defendant, it is the duty of the agent assigned to the said tribe, to issue to each member thereof whether of mixed or full blood, a certificate showing the location of the land selected by such Indian and that thereupon it becomes and is the duty of the

Secretary of the Interior to issue to such members a patent for the lands so selected under the laws hereinabove set forth and that notwithstanding the fact that your orator has in all respects complied with the requirements, rules and regulations adopted and prescribed by the defendant, The United States of America, relating to the election and allotment of said lands.

And your orator further shows unto your honors that by an act of Congress approved the 15th day of August, 1894, it was provided as follows:

That all persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law — Congress or who claim to be so entitled to land under any allotment act or under any grant made by Congress, or who claim to be unlawfully denied or excluded from any allotment or parcel of land to which they claim to have been lawfully entitled by virtue of any act of Congress may commence any prosecute or defend any action, suit or proceeding in relation to their right thereto, in the proper circuit court of the United States. And said circuit courts are hereby given jurisdiction to try and determine any actions, suit, or proceeding arising within their respective jurisdictions, in-
491 volving the right of any person, in whole or in part of Indian blood or descent, to any allotment on land under any law or treaty. And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same affect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; provided that the right of appeal shall be allowed to either party as in other cases.

All of which together with other matters and things will more fully appear in vol. 26, page 305, of the Statutes at Large, published by the authority of the United States, for which for greater certainty your orator begs leave to refer and as amended by act of Feb. 6th, 1901.

Wherefore your orator shows unto your honors that he is without adequate remedy at law and remediless in the premises unless relieved by your honors in this court of equity and he therefore prays the aid of the court in the premises, and that the said defendant may appear and answer this your orator's bill, but without oath, answer under oath being expressly waived. That it be ordered and decreed that your orator is entitled to have allotted to him the lands described as being selected more particularly in this your orator's bill of complaint, and that the defendant The United States of America be ordered and required to make and issue to your orator the patent contemplated and provided by the foregoing treaties and acts of Congress and to recognize in all respects the rights of your orator to and upon the lands so now by him occupied, and that his rights thereto under and by virtue of the said laws of the United States and treaties be forever established and that your

orator may have such other and further relief as may be
492 agreeable to equity and good conscience. And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court to be directed to the United States of America, therein and thereby commanding it on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand and to abide and to perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHAS. E. CLAPP, *Of Counsel.*

Endorsed: Filed Nov. 28 1898. Oscar B. Hillis, clerk. Re-filed Jul- 11 1901. Geo. H. Thummel, clerk.

493 Thereupon afterwards, to-wit: on the 31st day of July, 1901 an answer was filed in said case, which said answer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

EMIEL PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Doc. T, No. 266. Answer to Amended Bill of Complaint.

The Answer of The United States of America, Defendant, to the Amended Bill of Complaint of Emiel Peters, Complainant.

This defendant now and at all times hereafter saving and reserving unto *him*self respectively all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for *their* joint and several answer thereto, and unto so much and — parts thereof as this defendant is advised is or are material or necessary for *him* to make answer unto this defendant for *his* joint and several answer-, say-:

1. This defendant denies that the complainant is an Omaha Indian and denies that complainant is or ever was member of the Omaha tribe of Indians of Nebraska. Upon the contrary, this defendant avers that the said complainant is a white man, and a citizen of the United States, and that his ancestors were white persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska and this defendant denies that complainant or his ancestors ever maintained or sustained tribal relations with the Omaha tribe of

Indians of Nebraska, and denies that they ever participated
494 in the benefits and other rights of the said tribe, and denies that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

This defendant for further answer avers that the complainant claims to trace his lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but this defendant is not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore, leaves the complainant to his proof in that regard.

That there was born to the said Michael Barada and his wife, in the year — a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a free born white person, and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha tribe.

That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vien continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years,
495 until some time after the approval act of Congress of August 7, 1882, (22 U. S. Stats. at Large, 431), hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Euphrasia (the mother of this complainant) and the said Euphrasia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman, and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis and was never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Euphrasia Barada, so being a white woman and a citizen of the United States, married a white man named Fulton Peters, a white man of German nationality, and a citizen of the United States. There was born to the said Fulton Peters and his wife Euphrasia, a son named Emiel Peters, who is the complainant herein, and the said Emiel Peters being such white person and citizen of the United States, taking the status of his father continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the

act of Congress of August 7, 1882, when he came to the Omaha reservation with his parents, with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

This defendant for further answer avers that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667,) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Emiel
496 Peters, being only one sixteenth Indian blood, and he not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interiors Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or his ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Depart-
497 ment, that neither the complainant nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. This defendant further answering says: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Ma-garet Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents,

they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States Indian agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Ma-garet Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedants or descendants of said parties, so far as I know their name-," and which said report is a matter of record in this court, and binding upon the parties
498 thereto, including this complainant. That the said Antoine Barada was the grandfather of this complainant, and the said Euphrasia Peters and Fulton Peters were the parents of this complainant, and Mary Peters and Frank Peters and Mary Sailors were brothers and sisters of complainant.

4. This defendant further answering says: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation with the hope and expectation of obtaining allotments of lands, and that the said Peters family did *not* then and there make application to Alice C. Fletcher, the United States special alloting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the
499 work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible. allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned "to members of the tribe including their half or mixed blood relatives now residing with them."

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

500 Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not — all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it

is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation." In order that the department may further understand the views entertained
501 by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

502 This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land: moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation, and by

latter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said
503 Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit: William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about our intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

504 We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistako now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

505 Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters thought a mixed blood Omaha, is not adopted by the tribe of the Omaha reser-

vation; that he was not residing with the Omahas when the treaty of March 6, 1865, (14 Statutes 668) was made. (The article
506 of which extended the benefits conferred thereby in respect to allotments to such only of their half mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1765, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority and contrary to the wishes of the Omaha Indians you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary*.

507 5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. This defendant further avers that the said Ma-garet Sloan Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Com-

missioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested *that* the Hon. Secretary of War to cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter ——, Luke Sailors and Frank Peters, and such others as were intruders
508 thereon, under facts similar to *that* existing in the case of Frank Peters and which included complainant as he was of that class.

This defendant further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. This defendant further avers that Maragret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently
509 in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. This defendant for further answer avers that under article 10, of the treaty of July 15, 1830, (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to Euphrasia Peters for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Euphrasia Peters and her descendants including complainant were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further allotment of land.

This defendant for further answer denies that the complainant is entitled to an allotment of 160 acres of land, as the head of a family, and denies that the complainant is a head of a family, and avers that the complainant at the date of the approval of the act of Congress of August 7, 1882, being the act under which complainant claims the right of an allotment of land, was then a single person, but — years of age, and that the complainant was such a single person at the date of the amendatory act of March 3, 1893, and as such single person would not be entitled to have in any event more than 80 acres of land.

This defendant further avers that the United States allotting agent has reserved for the complainant pending this litigation, the W. ½ of the S. E. ¼ of section 35, township 25, north range 7 E., being 80 acres of land and which said reservation has been
510 noted upon the surveyed maps in the office of Commissioner of Indian Affairs awaiting the final determination of this suit; and that the land so reserved is the land and the only land occupied by the complainant; and this defendant denies that the said complainant either selected or occupied any of said lands at or prior to the date of the approval of the said act of Congress of August 7, 1882, but aver- to the contrary that at said time the said complainant did not live upon the said reservation, but moved on the reservation since the year 1888, and then for the first time made claim to the lands above described.

This defendant further avers that the United States allotting agent, appointed by the Interior Department to investigate selections and make allotments of lands, investigated, ascertained and found as a fact, that the complainant was not entitled to an allotment of any of the lands claimed by him, and reported his said findings to the Interior Department, and which said findings and report have been approved by the said department.

10. And this defendant says that if there is any other matter, cause, or thing in the said complainant's said bill of complaint, contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered or denied, is not true to the knowledge or belief of this defendant, and this defendant denies that the said complainant is entitled to the relief or any part thereof in the said complainant demanded.

And this defendant prays leave to be dismissed with *their* reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
U. S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 31 1901. Geo. H. Thummel, clerk.

511 Thereupon afterwards, to-wit: on the 22nd day of September, 1902, a replication was filed in said case, which said replication is in the words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska.

EMIEL PETERS
v.
UNITED STATES OF AMERICA ET AL. } No. 266, Doc. T.

The Replication of Emiel Peters, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant, saving and reserving to himself, all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer, of the defendants, for replication thereunto saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

THOMAS L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

512 Thereupon afterwards, to-wit: at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal "1" of said court to-wit:

EMIEL PETERS, Complainant, vs. THE UNITED STATES OF AMERICA, Defendant. } Doc. T, No. 266. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendant and against the complainant.

It is, therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

513 Thereupon afterwards to-wit: on the 13th day of October, 1903, an assignment of errors was filed in said case, which said assignment is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

EMIEL PETERS, Complainant, vs. THE UNITED STATES OF AMERICA, Defendant. } Docket T, No. 266. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

514 Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Emeil Peters was not entitled to claim and have allotted to him the land described in plaintiff's bill of complaint, to-wit: The west half of the south east quarter of section thirty-five (35), in township twenty-five (25), north, of range seven (7), east of the sixth principal meridian.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the
515 complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

EMEIL PETERS,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13, 1903. Geo. H. Thummel, clerk.

516 Thereupon, to-wit: on the said 13th day of October, 1903, a petition for appeal was filed in said case, which said petition is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

EMEIL PETERS, Complainant,
v.
THE UNITED STATES OF AMERICA, Defendant.

Docket T, No. 266. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore

rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

517 Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

EMEIL PETERS,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

Thereupon, to-wit: on the said 13th day of October, 1903, a bond was filed in said case, which said bond is in the words and figures following, to-wit:

518 266, T.

Know all men by these presents, that we, Emeil Petters & W. K. Mitchell are held and firmly bound unto The United States of America, in the full and just sum of one hundred dollars ($100.) to be paid to the said The United States of America heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Emeil Peters plaintiff and The United States of America defendant judgment was rendered against the said

Emeil Peters and the said Emeil Peters has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America citing and admonishing it to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Emeil Peters shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

EMEIL PETERS. [SEAL.]
W. K. MITCHELL. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of—
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

519 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

520 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Emeil Peters is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] # 2011. No. 266. United States circuit court, district of Nebraska. Emeil Peters *vs.* United States. Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

520a Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, by handing to and leaving a true and correct copy thereof with John L. Webster, its attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

520b UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908.}

SUSAN M. BONNEVIER,
Notary Public.

521 Thereupon afterwards, to-wit:—on the 18th day of May, 1901, amended bill of complaint was filed in said case, which said amended bill is in words and figures following, to-wit:—

In the Circuit Court of the United States within and for the District of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Mabel Reese, Defendants.

267, T. Amended Bill of Complaint.

To the honorable the judges of the said court:

Frank A. Peters, brings this his bill of complaint against The United States of America, and thereupon your orator complains and states that he is a member of what is, or until recently was known, as the Omaha tribe of Indians of Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and in the treaties hereinafter set forth. That he is of what is known as mixed blood and is a lineal descendant from one Michael Barada who intermarried with one Taegleha Hacienda, an Indian woman of the said tribe. That your orator and his ancestors back to said Michael Barada and his said wife, have continually maintained their domicile with the said tribe and maintained tribal relation- therewith so long and so far as any tribal relations have been maintained by the said tribe and has participated in the property and other rights of the said tribe and been recognized by the said tribe and the members thereof as a member of the said tribe and entitled to all its rights and privileges.

And further complaining your orator says that on the 16th day of March, A. D. 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of Amer-
522 ica wherein and whereby the tribe ceded to the United States certain lands in lieu whereof they received their present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including Margaret Sloan and her children. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large, vol. 10 page 1043, to which for greater certainty your orator refers.

And your orator further says that on the 6th day of March, A. D. 1865 another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14 page 667 to which for greater certainty your orator begs to refer.

And further showing your orator says that on the 7th day of August, A. D. 1882 an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council

the Seceretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, to each other person under eighteen years of age one sixteenth of a section. That all allotments should be *selected by the Indians,* heads of families selecting for their minor children and the agent selecting for each orphan child. All
523 of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22 page 341 to which for greater certainty your orator refers.

Your orator further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act on December 1884 and at subsequent times since.

Your orator further shows that on the 3rd day of March, A. D. 1893, an act of Congress was passed amending or extending the act of August 7th 1882 providing that with the consent of the Omaha tribe of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd 1893 but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council May 1899 and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimants.

And your orator further shows that he is a son of Euphrasia Peters who is a daughter of Antoine Barada, who in turn was a son of Michael Barada and Taegleha Hacienda who was as herein before set forth, an Omaha Indian woman, and a member of said tribe that ever since the year 1885 he has continuously resided
524 upon the Omaha reservation. That your orator first selected land in the year 1887 and was upon the reservation at the time the Omahas consented to accept the act of 1882.

That your orator selected for himself the lots No. 1 and 2 and W. ½ of N. E. ¼ of section 17, township 24 N. range 8 east and for his four minor children who are entitled to land, the lots numbered 2, 3, 4 in section 8 and 3 and 4 in section 20 and lots 1 and 2 in section 29 all in township 24 N., range 8 east. That the lands described were selected for his children as named to-wit:—Fulton, Ernest, Banjamin and Frank. That the last named is the youngest and

was born Feb. 7, 1891 and all are living. That your orator made his first selection in the year 1880 and that he moved with his family upon the reservation in the spring of 1883 and — living upon the reservation at the time the tribe — their consent to allotment and sale of the land as provided by the act of Aug. 7, 1882. That your orator has occupied and improved the land since 1885 and has continuously farmed it since said date and is farming it at the present time. That when your orator selected the lands they were unclaimed, unoccupied, wild and unimproved lands. That he has by his labor and the expenditure of money made a comfortable home and reduced the land — excellent farm land. That he has built a house, barn, graineries, sheds, fencing, dug a well, put — a wind mill, planted fruit and forest trees and shrubbery in all of the value of about $3000. or more. That your orator was encouraged by the agent of the tribe to make a home and improve the — he occupied and claimed. That your orator is a member of the Omaha tribe by blood and descent, by recognition, and in accordance with the rules, regulations and customs of said tribe. That the ancestors of your orator were members of the Omaha tribe and neither they or your oratorhave dissolved or terminated their relationship
525 or membership to the Omaha tribe of Indians. That your orator has been refused an allotment.

That lot 2 of section 8, township 24 N. range 8 E. which your orator selected in 1885 and which he broke and has continuously farm- since has been during the past year allotted and a patent issued therefor to Mabel Reese. That said Mabel Reese claims said land under and by virtue of the act of Congress of March 3rd, 1893. That long before she made any claim to the land and before the passage of the act authorizing allotments your orator had claimed, improved and occupied said land. That because of the issuing of said patent and the claim of the patentee under it all of which has occurred since the commencement of this action has made said Mabel a necessary party to this action.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioners of Indian Affairs to make leases for the Indians who hold allotments of land to place in possession the allottee or lessee, and that he threatens to place into possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainants who are now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land on controversy and his threats that he will remove your orator from the land make him a necessary party to this suit. And your orator further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, pros-

ecute or defend an action, suit or proceeding in relation to their
526 rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty, and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305 which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator begs to refer.

Your orator further states that the defendant The United States of America claims that by virtue of the 4th art. of the treaty of March 6th, 1865, it was provided that the assignment — be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood "including their half breed and mixed blood relatives now residing with them," and the defendant claims that your orator and his ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your orator admits that he and his ancestors were temporarily absent from the reservation at the time, but claim that such absence did not deprive them of the right of residence on the reservation nor the rights of allotment under the treaty of March 6th, 1865, nor their rights to allotment under the act of Congress of August 7th,
527 1882, that it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871, contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to; that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th 1865 nor at the time of making

the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent, the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation but who at all times and at the time of the treaty of March 6th, 1865 and ever since resided away from the reservation.

Your orator further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

528 Your orator further states that the defendant, The United States claims that the complainant or his ancestor has received allotment of land under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotment under the policy of the Indian office neither the complainant nor Euphrasia Peters his ancestor are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your orator admits that his ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830 as a half breed member of the Omaha tribe of Indians that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by her nor given to her in consideration of the relinquishment of any other right than those to which she was entitled on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th, 1830, sums of money, which were accepted in consideration of a relinquishment to the United States of all of their interests in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th, 1882; that your orator has not in any manner assigned or relinquished his right or claim to the benefit under the various laws and treaties granted to the Omaha tribe of Indians neither

529 has the United States by the executive department of the Government nor by the enactment of any law authorized this complainant or his ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of his tribe has been accepted or approved by the United States or any of its officers.

Wherefore your orator shows to your honors that he is without a remedy at law and remediless in the premises unless relieved by your honor in this court of equity and *they* therefore pray- the aid of the court in the premises and that said defendants, The United States of America, and Charles P. Mathewson and Mabel Reese may answer your orator's bill but without oath, answer under oath being expressly waived. That it be ordered and decreed that the patents issued to Mabel Reese is null and void and that the selection- as made by Frank A. Peters for himself and minor children are prior and superior to her claim and is his allotment and his children's allotments and that they are entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orator further prays for a preliminary order of injunction against the defendants Charles P. Mathewson and Mabel Reese enjoining and restraining each of them, their agents and employés from in any manner interferring with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court directed to the United States of America, Charles P. Mathewson and Mabel Reese, therein and thereby commanding them on a day certain and under a certain penalty therein to be lim-
530 ited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed May 18 1901 Geo. H. Thummel, clerk.

531 Thereupon afterwards, to-wit:—on the 2nd day of July, 1901, an answer was filed in said case, which said answer is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

FRANK A. PETERS, Complainant, *vs.* THE UNITED STATES OF AMERICA, Charles P. Mathewson, Mabel Reese, Defendants.	Doc. T, No. 267. Answer to Amended Bill of Complaint.

The answer of The United States of America, Charles P. Mathewson, Mabel Reese, defendants, to the amended bill of complaint of Frank A. Peters, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer say:

1. These defendants deny that the complainant is an Omaha Indian and deny that complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary, these defendants aver that the said complainant is a white man, and a citizen of the United States, and that his ancestors were white persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that complainant or
532 his ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainant claims to trace his lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe and therefore leaves the complainant to her proof in that regard.

That there was born to the said Michael Barada and his wife, in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father

and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vien continued to reside in the city of St. Louis or
533 in Richardson county, Nebraska, with the exception of about two years, until some time after the approval — act of Congress of August 7, 1882, (22 U. S. Statutes at Large, 341) hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Euphrasia (the mother of this complainant) and the said Euphrasia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and was never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Euphrasia Barada, so being a white woman and a citizen of the United States, married a white man named Fulton Peters, a white man of German nationality and a citizen of the United States. There was born to the said Fulton Peters and his wife Euphrasia, a son named Frank A. Peters, who is the complainant herein, and the said Frank A. Peters, being such white person and citizen of the United States taking the status of his father continued to reside in the city of St. Louis and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when he came to the Omaha reservation with his parents with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty
534 included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Frank A. Peters, being only one sixteenth Indian blood, and he not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and

therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to wit:—March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882 to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians, co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or his ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the In-
535 terior Department, that neither the complainant nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontanelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Asnley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886 and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary

Sailors or any of the immediate antecedents or descendants of said parties, so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant. That the said Antoine Barada was
536 the grandfather of this complainant, and the said Euphrasia Peters and Fulton Peters were the parents of this complainant, and Mary Peters and Walter Peters and Mary Sailors were brothers and sisters of complainant.

4. These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. "The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding
537 the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a memberof the Barada family from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring, when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865 (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that the lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

538 If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher under date of July 28, 1883, as a test case.

The case was stated as follows:

539 "Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here. Mr. Peters is a carpenter and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character and so has his wife.

Article 4 of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

540 This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation, and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were borne upon the duly certified census roll of 1871, or their descendant-, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father, Michael Barada, to-wit:—William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians,

and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit :—

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short,
541 we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We knew that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe, shall be held just as safe as our individual land.

542 If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons inciuding the said Thomas L. Sloan from the said reservation, and afterward, on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

543 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865 (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of

securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed
544 blood relation residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. These defendants further aver that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and Walter Peters and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report
545 such fact to the Commissioner of Indian Affairs and thereupon the said Indian agent served written notice upon complainant, Frank Peters, William Barada, Luke Sailors and Walter Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Frank Peters, Luke

Sailors and Walter Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as he was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose
546 and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants, and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. These defendants for further answer aver that under article 10, of the treaty of July 15, 1830, (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to Euphrasia Peters for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Euphrasia Peters and her descendants including Frank A. Peters, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

547 These defendants for further answer deny that the complainant is entitled to select land for his children and aver

that all the children of the complainant have been born since the approval of the act of Congress of August 7, 1882, being the act under which complainant claims the right to an allotment of land, and the defendants further aver that two of the children of the complainant have been born since the amendatory act of March 3, 1893.

These defendants further aver that the United States allotting agent has reserved for the complainant pending this litigation, substantially all the land in the last amended bill of complaint described, to-wit: Lots (3) and (4) in section 8. township 24, north range 8. Lots (1) and (2) W. half of the N. E. ¼ of section 17, township 24, north range 8, and lot (1) in section 29, township 24, north range 8, and which said reservation has been noted upon the surveyed maps in the office of the Commissioner of Indian Affairs, awaiting the final determination of this suit; that these defendants deny that the said complainant either selected or occupied any of said lands, at or prior to the date of the approval of the act of Congress of August 7, 1882, but aver to the contrary that at said time the said complainant did not live upon the said reservation but moved on to the reservation in the year 1887, and then for the first time made claim to the lands above described.

And these defendants deny that the complainant made upon any of said lands improvements of the value of $3000., and denies each *of* and singular *of* the averments in the amended bill of complaint relating to the said improvements.

And these defendants further aver that the United States allotting agent appointed by the Interior Department to investigate selections, to make allotments of land, investigated, ascertained and
548 found as a fact that the complainant was not entitled to an allotment of any of the lands claimed by him, and reported his said findings to the Interior Department, and which said findings and report *has* been approved by the Interior Department.

That said United States allotting agent did find upon investigation, that Mable Reese made claim to said lot (2), in said section 8, and that she had a superior right and claim to an allotment of said lot (2), in said section 8, township 24, north range 8, E., and the said United States allotting agent did make to said Mable Reese an allotment thereof, and thereafter made his official report to the Commissioner of Indian Affairs, that the said Mable Reese was entitled to the land allotted to her as above described, and which said allotment was subsequently approved by the Commissioner of Indian Affairs, and by the Secretary of the Interior, and a patent therefor has been issued to the said Mable Reese under date of April 11, 1900, and which said allotment was made and the said patent issued in the regular and due course of business.

And these defendants further aver that the complainant herein did not have any prior or superior or vested right to the land so patented to Mable Reese, and that the said allotment to her and the said patent to her, were made in all respects in conformity to law.

These defendants further aver that the said complainant was advised of the said allotments to the said Mable Reese and acquiesced therein, and in lieu thereof, made claim to lot (2), in section 29, and lots (3) and (4), in section 20, in his last amended bill of complaint described, but which said lots last above mentioned, said complainant had not theretofore made claim to.

10. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint
549 contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complaint demanded. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
United States Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 2 1901 Geo. H. Thummel, clerk.

550 Thereupon afterwards, to-wit:—on the 21st day of August, 1902, stipulation of facts was filed in said case, which said stipulation is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Mable Reese, Defendants.

Doc. T, No. 267. Stipulation of Facts.

It is hereby stipulated that the following names persons will testify in behalf of the complainant, to the facts set down after the- names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition- of the respective parties to the said facts had been formerly taken.

Frank A. Peters will testify that he selected the lands claimed in his petition including lot (2) in section 8, township 24, range 8, (being the lot allotted to Mabel Reese in the year 1885); that he plowed around said lot (2) in the year 1885, and broke 13 acres of said lot in the year 1887, and finished breaking the same in the year 1888, and has farmed said lot ever since, excepting two years when he rented said lot; and that there are no improvements on said lot (2).

He will further testify that there were no marks whatever on the land when he selected it and plowed the furrow around it.

He will further testify that he moved on to his home place where he now lives and where the home buildings are, in the year 1887. Said home place and buildings being on the lands reserved to the complainant, to-wit: the N. ½ of section 17, township 24, range 8 E.

551 Thomas L. Sloan will testify that Frank A. Peters cultivated and farmed lot (2) in section 8, township 24, range 8, for the last 10 or 12 years.

William F. Springer will testify that said lot (2) has been broken and cultivated for the last 8 or 10 years, but he does not know that the breaking and cultivating was done by Frank A. Peters.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainant.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

552 Thereupon afterwards, to-wit:—on the 21st day of August, 1902, stipulation of facts was filed in said case, which said stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the State of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Mabel Reese, Respondents.

Doc. T, No. 267.
Stipulation of Facts.

In the above entitled case the parties do hereby stipulate that the following facts and matters are true for the purposes of this suit.

First. That Michael Barada was a free born, full blood white man of French descent, and married Tuningletha or Taeglaha Hacienda, a full blood Omaha Indian woman.

Second. That there *was* born to said Michael Barada and his said wife a daughter named Margaret Barada, and a son named Antoine Barada. That said Margaret intermarried with Thomas Sloan, as hereinafter mentioned and from whom descended the Sloan and Frost families hereinafter mentioned. That from Antoine Barada descended the Barada, Kuhn, Sailor and the Peters families hereinafter mentioned.

Third. That the said Antoine Barada (being one half Indian blood and one half white blood) was born about 1811, and lived in St. Louis until he moved to the Nemaha reservation in 1856, and thence continued to reside on the Nemaha reservation until his death, 1885. He was educated in St. Louis.

Fourth. Antoine Barada married Josephine Vien, a full blood white woman of French descent. Said marriage took place in the city of St. Louis in the year 1836, where both parties at the time resided.

553 Fifth. That there *was* born to said Antoine Barada and his wife Josephine the following children. Michael Barada born 1839, Clara Barada born 1861, Julia Barada born 1863, Euphrasia Barada born 1837, William Barada born 1849, Celestine Barada born 1855, Thomas Barada born 1857. Said children were all born in the city of St. Louis with the exception of Thomas Barada who was born on the Nemaha reservation.

Sixth. That Antoine Barada moved from St. Louis to the so called Nemaha reservation in the year 1856, and received an allotment of 320 acres of land on said reservation, and patent therefor, under date of 1861, said patent being issued under sec. 5, (4) of act of Congress of July 31, 1854 (10 U. S. Stats. 332) to carry into effect article 10 of treaty of July 15, 1830 (7 U. S. Stats. 328).

Seventh. Michael Barada went with his parents to the Nemaha reservation in 1856, and subsequently married an Indian woman of the Iowa tribe and after his said marriage lived for a time on Omaha reservation. His first wife having died he married a full blood white woman and lived with her in the city of Brownville, Nebraska from 1872 until the time of his death in 1896.

Eighth. That Clara Barada lived with her parents in St. Louis and on Nemaha reservation until she married Harvey Campbell, a mixed blood of Iowa tribe in 1863, when she and her husband moved to the Iowa reservation and continue to reside there.

She had received an allotment on the Nemaha reservation and later received an allotment of 80 acres on Iowa reservation.

Ninth. Julia Barada lived with her parents in St. Louis from date of her birth until the family moved to the Nemaha reser*b*ation in 1865, and she first married William Barnaby a mixed blood Omaha, said marriage taking place at Rockport, Missouri, in the year 1863.

554 That there was born to them a daughter Josephine Barnaby who received an allotment of 80 acres on the Omaha reservation. She subsequently married Von Felden. They now are connected with the school on the Chippewa reservation, Wisconsin.

Julia after the death of Barnaby married M. V. Meyers, a full blood white man, from whom descended Garry P. Meyers. That Julia and Meyers were divorced and Julia subsequently in the year 1874 married William Provo, a half-breed Sioux, said Provo having met Julia on the Sac and Fox reservation, and the marriage took place at Falls City, Nebraska. In 1875 Julia and her husband William Provo, moved to the Omaha reservation and have continued to reside there until recently, when they moved to the town of Lyons. Julia received an allotment of 160 acres on Omaha reservation as head of a family.

Tenth. Euphrasia Barada born in St. Louis in 1837 and there married Fulton Peters, a free born full blood white man of German descent, and a citizen of the United States. Said marriage took place in the city of St. Louis in 1856, where both parties at the time resided. In 1856 they moved to the Nemaha reservation where Euphrasia received a patent for 320 acres of land under sec. 5 (4) of act of Congress of July 31, 1854 (10 U. S. Stats. 332) to carry into effect article 10 of the treaty of July 15, 1830 (7 U. S. Stat. 328–330). That Fulton Peters and his wife Euphrasia returned to St. Louis where Peters worked on the construction of the bridge over the river at said St. Louis from 1867 to 1874. They returned to Nemaha reservation and remained until 1883 when they moved to the Omaha reservation and remained about two years, when Fulton Peters and his wife Euphrasia and the younger children went back to the Nemaha reservation and where Euphrasia died in the year 1888, and Fulton Peters still lives on the land allotted to Euphrasia on the Nemaha reservation.

Eleventh. That there *was* born to Fulton Peters and his
555 wife Euphrasia, children as follows: Frank A. Peters born 1857, Mary Sailors *née* Peters born 1859, Walter Peters born 1864, Jacob Peters born 1870, Emiel Peters born 1875, and Josephine Mitchell *née* Peters born 1872, Maggie E. Rockwell *née* Peters born 1860.

Twelfth. William Barada was born in St. Louis in 1849. Lived with his parents in St. Louis until the family removed to Nemaha reservation — 1856. He remained on Nemaha reservation until 1884, when he moved to Omaha reservation. He is married to a full blood white woman and now lives on the Omaha reservation, but has not had an allotment of land.

Thirteenth. Celestine B. Barada was born in St. Louis in the year 1855, and resided with her parents Antoine Barada and his wife Josephine, until she married John Kuhn, a free born full blood white man. Said marriage took place on the Nemaha reservation in the year 1881. They continued to live on Nemaha reservation until 1883, when they moved to Omaha reservation where they continue to reside. There *was* born to said John Kuhn and his wife Celestine the following children:

Edward Kuhn born 1875, Ethel Kuhn Rutledge born 1877, Stella Kuhn born 1878, Rhul Kuhn born 1881, Barbara Kuhn born 1882, John Kuhn born 1883, Josephine Kuhn born 1887, Mary Ann Kuhn born Feb. 24, 1893, Margaret Kuhn born 1891 and George Kuhn born 1899.

Fourteenth. Thomas Barada, a son of Antoine Barada and his wife Josephine, was born in 1857. Lived with his parents on Nemaha reservation until 18—. He married a full blood white woman on the Nemaha reservation about the year 1885, and soon moved to Pine Ridge agency and in 1888 moved on to the Omaha reservation and still lives there.

Thomas Barada and his wife had children born to them
556 as follows:

Eva Barada born 1884.
Oddie Barada born 1886
Blade Barada " 1888
Fay Barada " 1891
Bina Barada " 1893.

Fifteenth. That Frank A. Peters, Walter Peters, Jacob Peters, Emiel Peters, Mary Sailors *née* Peters and Josephine Mitchell *née* Peters and Maggie Rockwell *née* Peters, children of Fulton Peters and his wife Euphrasia, *née* Barada, have separate suits pending in their individual rights for allotment of lands on the Omaha Indian reservation.

Sixteenth. That Frank A. Peters was born in St. Louis in the year 1857. Lived in St. Louis until 1869. Was on Nemaha reservation between 1869 to 1880. Came to Omaha reservation in 1880, and went back to Nemaha reservation same summer and remained there 3 years. In 1883 again returned to Omaha reservation and remained thereon one week, then went to town of Bancroft and returned to Omaha reservation in 1885, and has continued to live thereon since last named date.

That Frank A. Peters is married to a full blood white woman. Was married 20th day of November, 1882, on the Nemaha reservation. Has children by his marriage as follows:

Fulton Peters born 1883, September 2nd.
Earnest Peters born 1885, July 2nd.
Benjamin Peters born 1888, April 8th.
Frank Peters born 1891, February 7th.
Earl Peters born 1895, December 3rd.
Fred Peters born 1899, October 3rd.

Seventeenth. Mary Peters, daughter of Fulton Peters and his
557 wife Euphrasia born 1859, married Lot Sailors a free born full blood white man, said marriage took place at Falls City, Nebr. 1880, and came to Omaha reservation in 1883 and returned to Nemaha reservation same year, and again came to Omaha reservation in 1890 and have since remained on Omaha reservation. They have four children as follows:

Frank Sailors born December 1880.
Garl Sailors born 1886.
Edgar Sailors born 1882.
Byron Sailors 1891.

Eighteenth. Maggie Rockwell *née* Peters, daughter of Fulton Peters and his wife Euphrasia, born in 1860, married Edward Rockwell a free born full blood white man, at Verdon, Richardson county, Nebraska. Came to Omaha reservation first in 1881, again in 1883, and again in 1885, but did not take up a residence on Omaha reservation and never lived on Omaha reservation, and have lived in the State of Iowa for about ten years last past. They have children as follows:

Rene Rockwell born 1885.

Walter Rockwell born 1884.

Nineteenth. Walter Peters, a son of Fulton Peters and his wife Euphrasia, born 1864 at Nemaha reservation; married a full blood white woman, in 1896. He lived with his parents on Nemaha reservation until 1886, when he came to the Omaha reservation and has since lived there.

Twentieth. Jacob Peters, a son of Fulton Peters and his wife Euphrasia, married to a full blood white woman in Richardson county Nebraska, in 1891. He lived with his parents until 1889, when he came to Omaha reservation, lived there until 1899 when he and his family returned to Richardson county, Nebraska. Have no children.

Twenty-first. Emiel Peters, a son of Fulton Peters and his
558 wife Euphrasia, is a single man. He lived with his parents on Nemaha reservation until 1887, when he came to the Omaha reservation and lived there since the last named date.

Twenty-second. Josephine Mitchell *née* Peters, a daughter of Fulton Peters and his wife Euphrasia, lived with her parents on Nemaha reservation until her marriage with Walter Mitchell, a free born full blood white man, a citizen of United States, said marriage took place in Richardson county, Nebraska, in the year 1892. She came to Omaha reservation in 1893, remained until 18—, when she returned to Richardson county, Nebraska, and remained there until 1894 when she again returned to Omaha reservation and since lived there with her husband and family.

Twenty-third. Thomas Barada, a son of Antoine Barada and his wife Josephine, and a brother of Euphrasia Barada, who became the wife of Fulton Peters, was born on Nemaha reservation 1857. He married a full blood white woman in Richardson county Nebraska, and came to Omaha reservation 1892 and lives on the reservation at this date.

Twenty-fourth. That no one of either the Barada, Sloan, Peters, or Frost families mentioned in this stipulation, received or had an assignment or certificate of assignment under article 4, of the treaty of March 6, 1865, (14 U. S. Stat. 667.) That a schedule of selections of land in severalty in accordance with said fourth article and the prescribed rules and regulations of the Office of Indian Affairs, approved by the Hon. Secretary of the Interior, October 26, 1867, showing the names of those entitled to assignments of lands and their respective tracts duly certified by the chiefs of the Omaha tribe, and certified and submitted by the Omaha Indian agent to the Commissioner of Indian Affairs, December 30, 1870, and approved by the Secretary of the Interior January 26, 1871.
559 That none of the names of the respective families in this stipulation mentioned appear on said schedule. Neither do the following names appear on said schedule. John Pilcher, Mary La Flesche, Lewis Neal, Susan Neal, Emily Campbell, Florence Campbell, Julia Campbell, Amy Murphy, Josephine Filson, Charles Pil-

cher, Julia Provo *née* Barada, Josephine Barnaby. That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters were complainants, and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents; it was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or descendants of said parties so far as I know their names," and which said report is a matter of record in this court, and none of the names of any of the
560 parties plaintiffs in the pending suits appear on said annuity pay rolls. See stipulation in 174 Doc. T on same subject of annuities.

Twenty-sixth. Celestine Kuhn *née* Barada, a sister of Euphrasia Peters made application to Alice C. Fletcher, special U. S. Indian agent, for allotment of lands on the Omaha Indian reservation, and said Fletcher, special U. S. Indian agent, reported adversely to the right of Celestine Kuhn to an allotment of land, and which finding and report of said Alice C. Fletcher, special U. S. Indian agent was approved by the Commissioner of Indian Affairs under date of September 13, 1883, and the ruling of the Commissioner of Indian Affairs thereon was and is as follows:

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view of securing, if possible, allotments of land.

"The law under which allotments are being made to the Omahas relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

"The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

"I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

"Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent
561 of Indian affairs, and having been submitted to the department by this office January 26, 1871.

"Neither the name of Antoine Barada (the father) nor that of the applicant Celestine Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

"If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

"It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

"Manifestly such was not the intention for it is not at all likely that there would be land enough in the entire reservation to go around that way.

"Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

(Signed) H. PRICE,
Commissioner.

Twenty-seventh. Euphrasia Peters, the wife of Fulton
562 Peters and the mother of the Peters family, also made application to Alice C. Fletcher, special U. S. Indian agent, for an allotment of lands on the Omaha Indian reservation, and said Alice C. Fletcher made her official report adversely to the claim of Euphrasia Peters to the Commissioner of Indian Affairs under date of July 28, 1883, and which said report contained the following:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

"Antoine married a French woman and his children were born and reared in St. Louis.

"Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

"All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

"After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

"Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

"He had excellent credentials as to character, and so has his wife.

"Article 4 of the treaty of 1865, defines those entitled to lands to be 'the members of the tribe including their half-breed or mixed blood relations now residing with them.'

"This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the lands;
563 moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

"Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

"It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

"This objection is a serious one, and I know it to be well taken by many persons' field observation.

"The Omahas cannot afford to give these outsiders of their best lands."

Under date of August 7, 1883, the report and ruling of Alice C. Fletcher special U. S. Indian agent, adversely to the claim of Euphrasia Peters was approved by the Commissioner of Indian Affairs.

28. Under date of March 19, 1888, a petition signed by 65 members of the Omaha tribe of Indians, was transmitted to the Commissioner of Indian Affairs, and which said petition is as follows:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian

blood in him is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

564 Our land was allotted and patented to us under the rules of this treaty, we were told.

We knew that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall

565 have their allotments on the tribal land. These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

29. On November 14, 1888, the Commissioner of Indian Affairs, transmitted said petition to the Secretary of the Interior, and in his report thereon among other things said as follows:

"The allotment of land on the Omaha reservation was made under the provisions of the act of Congress approved August 7, 1882 (22 Stat. 341); and the said act expressly stipulates and provides that the said allotments "shall be deemed and held to be in lieu of "the allotments or assignments provided for in the fourth article "of the treaty with the Omahas, concluded March 6, 1865, and for "whom, for the most part certificates in the names of individual "Indians to whom tracts have been assigned, have been issued by "the Commissioner of Indian Affairs, as in said article provided."

"The fourth article of the treaty of March 6, 1865, therein referred to (Stat. 14 668) extended the benefits conferred thereby, in
566 respect to allotments, to such only of their half or mixed — relatives as were *residing with them* at the date of the treaty, the language of the said article being "including their half or mixed blood relatives now residing with them."

"It will be observed that the Indians of the Omaha reservation in their complaint to this office, charge that Frank Peters is not entitled to land on their reservation; that they admit that he has Omaha blood in his veins, being of the mixed blood families who were provided with land by them on the Nemaha reservation; that the mixed bloods were excluded by the Omahas in their treaty of 1865, from taking lands on their reservation; that the Peters family tried four years ago when allotments were being made to the Omahas, to obtain allotments; that they, the Peters family, and other mixed bloods, were denied the right to allotments by the Omahas, and they ask for the removal of Frank Peters from their reservation.

"It may be remarked here that as soon as the law became known, I refer to the act of August 7, 1882, providing for the sale of a portion of the Omaha reservation, and the allotments of lands in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, came to the Omaha reservation in the hope of securing allotments under the new law.

"Some of them were not born among the Omahas and none of them had been with the tribe for years—some 10 and others 20 or 30 years.

"The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to this office by the special agent charged with the work of
567 allotting the lands, for decision as to the right of the parties to receive allotments.

"The party, Frank Peters, against whom complaint is made, is a mixed blood Omaha. He is not adopted by the tribe on the Omaha reservation; he was not residing with them when

the treaty of March 6, 1865, was made; his name is not borne upon the duly certified roll of 1871, submitted by the Omaha council, disclosing the names of all Indians or mixed bloods entitled to lands on the Omaha reservation.

"It would appear therefore, that the said Peters is not entitled to allotment of lands on the Omaha reservation, under the treaty of March 6, 1865, and the provisions of the act of Congress of August 7, 1882, and is upon the reservation without authority.

"It will be observed from the foregoing that this office as well as the Omaha tribe, takes the ground that none of the half or mixed blood Omahas, living at the date of the treaty of 1865, who were not residing with the Omahas at that time, nor the descendants of such, are entitled to allotments on the Omaha reservation by reason of their relationship to the Omahas.

"It appears from the records of this office, that there were some 70 half-breed Omahas who received patents for lands on the Great Nemaha reservation, and it is very important that the question of their rights or the rights of their descendants to land on the present Omaha reservation be determined.

"A decision in the present case will settle the whole question. If you concur in the opinion above expressed, I have the honor to request authority to remove the said Peters and all others of a like class from the reservation.

Very respectfully, JNO. H. OBERLY,
Commissioner."

568 30. That in response to the report of the Commissioner of Indian Affairs of November 14, 1888, recited in the proceeding paragraph, the Secretary of the Interior ruled under date of December 5, 1888 as follows:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865 (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871, submitted by the Omaha coun-

cil which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stat. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them
the Peters family came to the Omaha reservation in the hope
569 of securing allotments under the new law and that this was
denied them, your office holding that under the said act of August 7, 1882, none but members of the tribe and their half or mixed blood relation- residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

31. Under date of August 27, 1890, the Commissioner of Indian Affairs issued a letter of instruction- to the Indian agent as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS.
WASHINGTON, *August* 27, 1890.

Robert H. Ashley, Esq., U. S. Indian agent, Omaha & Winnebago agency, Winnebago, Nebraska.

SIR: I herewith enclose a copy of a letter of even date
570 herewith addressed by this office to Rev. Thomas L. Sexton,
giving a history of the claim of Mr. F. A. Peters to an allotment of land on the Omaha reservation, the rejection thereof by the department, and of the authority granted by the same for his removal, with others of a like class from the reservation. I also transmit a letter from Rev. Thomas L. Sexton, dated August 19, 1890, and a communication therewith enclosed from Mr. Peters of the 6th inst., asking to be enrolled as a member of the Omaha tribe and transmitting a copy of a communication bearing on the subject from R. W. Furnas, Esq., to Hon. C. H. Van Wyck.

You are instructed to require Mr. Peters and others of a like class to remove from the Omaha reservation. Should they fail to comply within a reasonable time, you will so report to this office giving

the names of the parties and stating all facts in connection therewith. If any of the parties occupy individual allotments of other Indians, you will so report giving a description by legal subdivisions of the lands so occupied, with names of the allottees.

You will ascertain and report whether the allegations made by Mr. Peters in his said communication that many others who were given lands on the old Nemaha reservation, now hold allotments on the Omaha reserve, is correct, and if so, whether the Omahas consented to their admission to tribal rights.

You will return Mr. Sexton's letter with its enclosures with your report.

Very respectfully, T. J. MORGAN,
Commissioner.

32. The letter to Rev. Thos. L. Sexton in answer to his letter in behalf of Frank Peters, a copy of which was enclosed to the Indian agent is a part of his instructions under the letter of August
571 27, 1890 is as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *August* 27, 1890.

Rev. Thomas L. Sexton, Seward, Nebr.

SIR: I have received your letter of August 19, 1890, transmitting with favorable mention, one from Mr. F. A. Peters, dated Omaha agency Nebraska, the 6th instant, claiming to have rights in the Omaha tribe, and asking to be enrolled as a member thereof, and given an allotment of land &c., and enclosing a copy of a communication bearing on the subject, from Robert W. Furnas, Esq., to Hon. C. H. Van Wyck.

In reply I have to say, that the allotment of land on the Omaha reservation was made under provisions of the act of Congress approved August 7, 1882, (22 Stats., 341) which expressly stipulates and provides that such allotments shall be deemed and held to be in lieu of "the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for whom for the most part certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs as in said article provided."

The fourth article of the treaty referred to (14 Stats., 668), extended the benefits conferred thereby, in respect to allotments, to such only of their half or mixed — relatives, as were *residing with them* at the date of the treaty, the language of the article being "including their half or mixed blood relatives now residing with them."

572 As soon as the act of August 7, 1882, providing for the sale of a portion of the Omaha reservation and the allotments of lands in severalty to the members of the tribe became known a num-

ber of mixed bloods from the Old Nemaha reservation came to the Omaha reservation in the hope of securing allotments under the new law. The Indians of the Omaha reservation manifested the most determined opposition to such persons being allowed to participate in the distribution of the land. The instructions given by this office to the special agent making allotments on the Omaha reservation, concerning the class of claimants referred to, were to the effect that none but members of the Omaha tribe, and their—or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871 of the Omahas, which was approved by the department, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, or the descendants of those so enrolled, and such others as might have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

Under date of March 19, 1888, sixty-five Indians of the Omaha reservation addressed a communication to this office, protesting against giving an allotment to Mr. Peters who was alleged to belong to one of the mixed blood families, provided with land on the Nemaha reservation, by the Omaha tribe by the 10th article of the treaty of July 15, 1830 (7 Stats. 328).

This office submitted a report on the subject to the department under date of November 14, 1888, reciting the foregoing facts and conclusions, and stating that Mr. Peters was not adopted by said tribe, was not residing with them when the treaty of March 6, 1865, was made, that his name is not borne upon the said roll of those entitled to lands upon the Omaha reserve, that he was upon
573 the reservation without authority and recommending that authority be granted for his removal therefrom with all others of a like class.

The Secretary of the Interior, under date of December 5, 1888, granted authority as recommended for the removal of Mr. Peters, and all others of a similar class from the reservation, and on the 15th of that month, the agent at the Omaha and Winnebago agency was instructed to remove Mr. Peters and the others from the reservation. The agent reported April 3, that Mr. Peters refused to remove, and he was again instructed May 10, 1889, to remove him, but it appears that this has not been done.

This office does not deem it advisable to take steps with a view to obtaining a reversal of the decision of the department against Mr. Peters.

Very respectfully,

T. J. MORGAN,
Commissioner.

33. Pursuant to instruction in letter of August 27, 1890, set out in paragraph No. 31 of this stipulation, Robert H. Ashley U. S. Indian agent on the 13th day of September 1890, served written notice on Frank A. Peters and others of like class, Walter Peters, William Barada, Lot Sailors and Celestine B. Kuhn to remove from

the Omaha Indian reservation, and reported said fact to the Commissioner of Indian Affairs by communication under date of September 13th, 1890.

That subsequently Robert H. Ashley, U. S. Indian agent also served written notice upon Margaret Sloan and Thomas L. Sloan to leave the Omaha reservation.

That in 1883 Margaret Sloan made parol application to Alice C. Fletcher, U. S. allotting agent, for allotment of lands on the Omaha Indian reservation, and that Alice C. Fletcher as U. S. allotting
574 agent decided that Margaret Sloan and her descendants were not entitled to allotments under the act of 1882, and under date of April 28, 1884, made her official report to the Commissioner of Indian Affairs adversely to the right of Margaret Sloan and her descendants, to have allotment of land on the Omaha Indian reservation, and which report was approved by the Commissioner of Indian Affairs under date of May 9, 1884.

That under date of August 27, 1890, Hon. T. J. Morgan, Commissioner of Indian Affairs instructed in writing Robert H. Ashley, United States Indian agent for the Omahas, to require Frank A. Peters, a descendant of Antoine Barada, and "others of a like class" to remove from the Omaha reservation. Should they fail to comply, the agent was instructed to report the fact to the Commissioner of Indian Affairs, "giving the names of the parties and stating all the facts in connection therewith."

That the agent did serve notice on Frank A. Peters and others of like class including Celestine B. Kuhn, William Barada, Luke Sailors, Walter Peters, Margaret Sloan and Thomas L. Sloan, to leave the Omaha reservation, and with reference to the Sloans the agent reported to the department under date of Oct. 17, 1890, as follows:

"I have the honor to report in addition to that given in my letter of September 15th, 1890, in reply to office letter of August 27th, L. 25845–90, 'that I did on the 14th day of October 1890, give written notice to Thomas L. Sloan and Margaret Sloan to leave the Omaha reservation under instruction of office letter of August 27th, 25845 L. 90." I would say in explanation that the Omaha Indians in council, on 7th day of October discussed this matter with the Sloans, and it was almost the unanimous opinion and wish that they be removed from the reservation the same as Peterson (Peters?) and others. I am unable to find where the Sloans have any more
575 right than the others mentioned, and take them to be of 'like class' as mentioned in yours of the 27th of Aug.

I would also say that Mr. Sloan informed me that he would not leave.

I have understood from Mr. Sloan that he had a better claim than Peterson (Peters?) *et al.*, but in what respect I am not informed and I am unable to find anything on file in this office to give me any information."

34. Under date of October 2, 1890, the Commissioner of Indian Affairs transmitted the following to the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *Oct.* 2, 1890.

The honorable the Secretary of the Interior.

SIR: Referring to office report dated November 14, 1888, (copy herewith) requesting authority to remove one Frank Peters and all others of a like class from the Omaha reservation, in Nebraska, and to the reply of the department dated December 5, 1888 (copy enclosed) authorizing the removal of said Peters and any other persons who might be upon said reservation under a similar state of facts, and to office report of June 1st, 1889—copy enclosed—stating that said Peters had refused to comply with the requirement of this department to remove from the reservation, &c., I have to say that Robert H. Ashley, Esq., agent at Omaha and Winnebago agency, Nebraska, by letters dated respectively June 27, and August 26, 1890, reported that the Omaha Indians earnestly desired the removal of said Peters also Walter Peters, Wm. Barada and—(Luke)
576 Sailor—designated as of the same class as said Frank Peters—from the unallotted lands of said reservation.

This office by letter dated August 27, 1890, instructed the agent to require said Frank Peters and others similar to him, intruding upon the unallotted lands of the Omaha reservation, to remove therefrom, to which he replied on September 15, 1890, stating that he had given the parties above named written notice to remove from the reservation, and that they all informed him that they would not remove until compelled to do so by process of law or force.

Said Frank Peters is clearly excluded from rights on the Omaha reserve by the 4th article of the treaty of March 6th, 1865, with the Omahas (14 Stats. 668) which extends the benefits thereby conferred as to allotments to such only of their half or mixed — relatives as were residing with them at the date of the treaty, and the act of August 7, 1882 (22 Stats. 341) under which the allotment of lands was made on the Omaha reserve provides that such allotments shall be in lieu of the allotments provided for in said article 4.

It appears that the other persons above named also belong to the class excluded from allotments on the Omaha reserve.

There is no claim that the parties referred to have been adopted by the Omaha tribe since the date of said treaty.

The Omahas having received allotments are U. S. citizens, but it is provided in the 8th section of said act that the unallotted lands of said reservation shall be patented to the Omaha *tribe* of Indians which patent shall be of the legal effect and declare that the United States does and will hold the land thus patented for the period of twenty-five years in trust for the sole use and benefit of said tribe, &c., hence section 2149 of the Revised Statutes authorizing the
577 removal of persons from tribal reservations is applicable thereto.

It is evident that the intruders above named do not intend to remove from the reservation, and that force will be requisite for that purpose, and in view of the defiant attitude of the parties, I believe that such force should be sent to eject them as will be likely to prevent any attempt at resistance.

I therefore respectfully recommend that the matter be submitted to the honorable Secretary of War, with the request that he will cause the commander of the nearest military post to said reservation, to furnish, upon the application of Agent Ashley, proper military aid to eject from the unallotted lands of the same, said Frank Peters, and such other persons including said Walter Peters, Wm. Barada, and Luke Sailors as the agent may designate, as unlawfully upon the reservation, under a state of facts similar to those existing in the case of said Frank Peters.

Copies of the letters referred to from Agent Ashley are herewith enclosed.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

35. Under date of January 12, 1891, the Honorable T. J. Morgan, Commissioner of Indian Affairs, transmitted the following to the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *January* 12, 1891.

The honorable the Secretary of the Interior.

SIR: A delegation of Omaha Indians, duly accredited, is 578 now in this city urging among other things the removal of intruders from their reservation, that is, from the unallotted lands of the reservation. They say "You told us that you would hold our land in trust for 25 years, and we think these people are not only opposing us but you also, and we look to you to decide this matter at once and do what is right. If they have rights here we want to know it; if they have no rights we expect you to put them off."

At their earnest appeal for prompt action looking to the removal of these intruders, I promised to renew my recommendation of October 2, 1890, that the matter be laid before the Secretary of War with request for military aid to eject said parties from the reservation.

I therefore respectfully invite your attention to office letter of October 2, 1890, and previous report of November 14, 1888, and renew my recommendation that the matter be submitted to the honorable Secretary of War with the request that he cause the commanding officer of the nearest military post to the Omaha reservation, to furnish, upon the application of Agent Ashley, proper military aid to eject from the unallotted lands of the Omaha reservation the intruders therein referred to.

The Omahas feel aggrieved that these people have not been removed. They claim that they are breaking large quantities of land and cutting and selling grass, without right and without paying for it. They say that if they are allowed to remain until spring they will make further improvements, and as they fear get a stronger foothold on the reservation.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

579 36. Under date of January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, *in* a communication direct to Robert H. Ashley, U. S. Indian agent, which contained the following:

"As you have had a good many *per capita* payments to Indians to make, I do not think it necessary to instruct you in detail in regard to the general rules to be followed, and the customs and usages which experience has shown to be most advisable, but will inclose with this a copy of a letter, addressed by me, under date of 12th, instant, to certain Omaha delegates, who are now in this city, by which you will observe that certain parties therein named who belong to a class of trespassers on the Omaha reservation, and who are not entitled to lands, or other benefits, under the act of August 7, 1882, above referred to, are not to be enrolled by you, or allowed any share in the payment, you are about to make.

The names of those specially objected to by the delegates are—William Barada, Thomas Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors, and their families, and you will not enroll or pay any of them."

37. That Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they would not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska and twelve hundred others being members of the Omaha tribe of Indians,

were made defendants and in which suit said complainants
580 claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently on the 25th day of April a decree of dismissal was entered in said cause as follows:

Bill Dismissed Pl'ffs for Cost.

"It is held that the President is authorized to make such disposition of money and property as he may think advisable for the benefits of the Omaha Indians, and that his authority to do so cannot be restricted by injunction; and on that ground and for these reasons the bill is dismissed."

(S'g'd) ELMER S. DUNDY, *Judge.*

(Journal "R" page 425.)

In which said judgment and decree was not appealed from, but remained in full force and effect:

Thirty-eight. That no one of the families, or their ancestors mentioned in this stipulation received or had an assignment or certificate of assignment under article 4, of the treaty of March 6, 1865 (14 U. S. Stat. 667). That a schedule of selections of land in severalty in accordance with said fourth article and the prescribed rules and regulations of the Office of Indian Affairs, approved by the Hon. Secretary of the Interior October 26, 1867, showing the names of those entitled to assignments of lands, and their respective tracts was duly certified by the chiefs of the Omaha tribe, and certified and submitted by the Omaha Indian agent to the Commissioner of Indian Affairs, December 30, 1870, and approved by the Sec-
581 retary of the Interior January 26, 1871. That none of the names of the respective Sloan, Barada, Peters, Kuhn, Sailor or Frost families in this stipulation mentioned appear on said schedule.

The Commissioner of Indian Affairs under date of April 24, 1899, appointed John K. Rankin, U. S. special agent to make allotment of lands to the Omaha tribe of Indians, under the clause of the Indian appropriation act of March 3, 1893, amendatory of the act of August 7, 1882, and said John K. Rankin in May 1899 arrived at the Omaha reservation and continued in the performance of his duty as such special allotting agent, until February 1900, and that the allotments by him made hereinafter referred to, were completed in the month of January 1900, and the schedule of said allotments *were* signed by the said John K. Rankin, U. S. special agent, and transmitted by him to the Commissioner of Indian Affairs, and which said schedule of allotments was approved by the Commissioner of Indian Affairs, and by the Commissioner transmitted to the office of the Secretary of the Interior and approved by the Secretary of the Interior, and transmitted from the office of the Secretary of the Interior to the General Land Office under date of February 6, 1900, for the purpose of having patents issued to the allottees, and that patents to respective allottees were issued under

date of April 11th, to the respective allottees hereinafter mentioned for the lands to them respectively allotted.

Thirty-ninth. That the said John K. Rankin, U. S. special agent declined to make allotments to the respective complainants on the grounds that they were not entitled to the allotment of lands claimed by them respectively, but the said John K. Rankin did make allotments of some of the lands claimed by the respective complainants to various other persons, and as hereinafter more particularly appears.

582 Garry P. Meyers makes claim to the S. E. ¼ section 25, township 25, range 7; that the N. ½ of the S. E. ¼ of said section 25, has been allotted to Garry P. Meyers; and the S. ½ of the S. E. ¼ of said section 25 has been allotted and patented to Taena Webster.

Frank A. Peters makes claim to lots (1) and (2) and W. ½ of N. E. ¼ section 17, township 24, range 8, and for his four minor children, lots No. (2), (3), (4) in section 8, and (3) and (4) in section 20; and lots (1) and (2) in section 29, all in township 24, range 8 east.

That said John K. Rankin reserved lots (1) and (2) and the W. ½ of the N. E. ¼ of section 17, pending the result of this litigation.

Said John K. Rankin made an allotment of lot 2 in section 8, to Mabel Reese, and reserved pending this litigation lots (3), and (4), in section 20, and lots (1) and (2) in section 29 pending the result of these litigations. .

Mary Sailors *née* Peters makes claim to the S. E. ¼ section 17, and N. E. ¼ section 29, township 24, range 8; and the S. ½ of the S. W. ¼ of section 8 and the N. ½ of the N. W. ¼ of section 17, township 25, range 7.

That John K. Rankin U. S. allotting agent reserved for Mary Sailors, pending this litigation, the S. E. ¼ section 17, township 24, range 8, and also the N. E. ¼ of section 29, township 24, range 8; the S. E. ¼ of the S. W. ¼ of section 8, township 25, range 7, was allotted and patented to Mary Ann McCauley in 1884.

Maggie E. Rockwell *née* Peters makes claim for herself to the S. ½ of the S. E. ¼ of section 17; and the N. ½ of the N. E. ¼ section 20, and for Walter Rockwell, the S. ½ of S. W. ¼ of section 17, and for Rena Rockwell the N. ½ of the N. W. ¼ of section 20 all in township 25, range 7. That the N. W. ¼ of the S. E. ¼ of section 17, has been allotted to Edward Harlan, and the remaining land

583 in her claim appears to be unallotted.

Jacob Peters makes claim to the N. ½ S. W. ¼ of section 35; and the N. ½ of the S. E. ¼ of section 34, township 25, range 7.

That John K. Rankin reserved the N. ½ of the S. W. ¼ of section 35, for Jacob Peters pending the result of this litigation, and allotted the N. ½ of the S. E. ¼ of section 34, township 25, range 7, to Joseph Hallowell and Stella Hallowell to whom patents have issued.

Emiel Peters makes claim to the W. ½ of the S. E. ¼ of section 35,

township 25, range 7, and which has been reserved for Emiel Peters pending the result of this litigation.

Josephine Mitchell *née* Peters makes claim to the S. ½ of S. W. ¼ of section 35, and the S. W. ¼ of the N. E. ¼; and the S. E. ¼ of N. W. ¼ of section 34, township 35, range 7.

That said John K. Rankin reserved the S. ½ of the S. W. ¼ of said section 35 for Josephine Mitchell pending the result of this litigation, and allotted the S. W. ¼ of the N. E. ¼ of section 34 to Nellie Reese; and the S. E. ¼ of the N. W. ¼ of section 34 to Nungthae Thae Reese for which patents issued April 11, 1900.

Celestine B. Kuhn *née* Barada makes claim to the N. E. ¼ of section 16, township 25, range 7, and for her minor children as follows:

For Rule Kuhn the E. ½ of the N. W. ¼ of section 16, township 25 north, range 7 east. For John Kuhn the S. ½ of the S. W. ¼ of section 10, township 25 north, range 7 east. For Barbara Kuhn, the W. ½ of the N. W. ¼ of section 15, township 25 north, range 7 east. For Josephine Kuhn the N. ½ of the S. W. ¼ of section 10, township 25 north, range 7 east. For George Kuhn the W. ½ of the N. W. ¼ of section 16, township 25 north, range 7 east. For Margaret Kuhn the S. ½ of the S. E. ¼ of section 9, township 25 north, range 7 east. For Mary Ann Kuhn the S. E. ¼ of the N. E. ¼ and the
584 N. E. ¼ of the S. E. ¼ of section 9, township 25 north, range 7 east.

John K. Rankin reserved, pending the result of this litigation the lands claimed in the N. W. ¼ in section 16, township 25, range 7, pending the result of these litigations; and S. W. ¼ of the S. W. ¼ of section 10 and the N. W. ¼ of section 10, and the N. W. ¼ of section 15, and the S. ½ of the S. E. ¼ of section 9, township 25, range 7; and reserved the S. E. ¼ of the S. E. ¼ of section 9, for the Monette family, and reserved the N. E. ¼ of the S. E. ¼ of section 9, for the Kuhn family, and allotted the N. W. ¼ of the S. W. ¼ of section 9, to Harry Solomon to whom patent has issued.

That Edward Kuhn makes claim to the S. ½ of the S. E. ¼ of section 19, township 25, range 7, which John K. Rankin reserved for him pending the result of this litigation.

Stella Kuhn makes claim to the E. ½ of the N. W. ¼ of section 15, township 25, range 7, which the said John K. Rankin reserved for her pending the result of this litigation.

Ethel Kuhn Rutledge *née* Kuhn, makes claim to the N. ½ of the S. E. ¼ of section 19, township 25, range 7, which the said John K. Rankin reserved for her pending the result of this litigation.

That Thomas Barada makes claim to the N. E. ¼ of the N. E. ¼ of section 22, township 24, range 8, and the W. ½ of the N. E. ¼ and the S. E. ¼ of the N. W. ¼ both of section 4, township 24, range 8; and the S. W. ¼ of section 16, and the N. W. ¼ of section 21, and the N. ½ of the S. W. ¼ of section 21, all of township 25, range 7.

That said John K. Rankin reserved the N. E. ¼ of the N. E. ¼ of section 22, township 24, range 8, for Thomas Barada, and also the

N. E. ¼ of section 4, township 24, range 8, pending the result of this litigation.

585 Fortieth. That the said John K. Rankin, U. S. special allotting agent did reserve for the different members of the Peters family pending the result of these litigations, all of the S. W. ¼ and all of the S. E. ¼ of section 35, township 25, range 7 east, and lots (3) and (4) in section 8, township 24, range 8, and lots (1) and (2) in section 17, township 24, range 8, and the W. ½ of the N. E. ¼ of section 17, township 24, range 8, and lots (3) and (4) in section 20, township 24, range 8, and (1) and (2) in section 29, township 24, range 8.

That said John K. Rankin reserved for Mary Sailors *née* Peters the S. E. ¼ of section 17, and the N. E. ¼ of section 29, township 24, range 8.

That the said John K. Rankin reserved for the members of the Kuhn family the N. W. ¼ and the N. E. ¼ of section 16, and the N. W. ¼ of section 15, and the S. W. ¼ of the S. W. ¼ of section 10, and the S. ½ of the S. E. ¼ of section 9, and the N. E. ¼ of the S. E. ¼ of section 9, all in township 25, range 7, and also the S. E. ¼ of section 19, township 25, range 7.

The said John K. Rankin also reserved for the Baradas, the N. E. ¼ of section 4, the W. ½ of section 16; the E. ½ of the N. E. ¼ of section 17, and the N. E. ¼ of the N. E. ¼ of section 22, all in township 24, range 8, and which said reservations were reported by him to the Commissioner of Indian Affairs, and the lands so reserved have been so designated on the maps in the office of Commissioner of Indian Affairs, pending the result of these litigations, and out of which allotments have been made to the different members of the Peters, Barada and Kuhn families, who have suits pending, should it be determined that they or any of them be entitled to allotments of land on the Omaha Indian reservation. Signed subject to correction of clerical errors.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

BROME & BURNETT,
ANDERSON & KEEFE,
Att'ys for Compl't.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

586 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, a deposition was filed in said case, which said deposition is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Mabel Reese, Defendants.
} Docket T, No. 267. Depositions.

FRANK A. PETERS, a witness produced in behalf of the complainant, being first duly sworn, deposes and says, as follows:—

Direct examination by Mr. THOMAS L. SLOAN:

Q. Give the names of those of your children for whom the Government has paid tuition?

A. Fulton, Ernest, Bennie, Frank. Tom is here and Bill is here. I think they had four children apiece.

Q. Give the children of William Barada?

A. Willie was first, Alice, Job and Mahilda. Those are the four of William Barada. Tom Barada's are, Eva, Odda, Blade and Toy. Mary Sailors had one, Garl.

Q. For how many years did you draw this tuition for these children?

A. For two years.

Q. What years were they?

A. 1897 and 1898.

Q. Will you furnish the records showing these matters?

A. Yes, sir; and the record is at the agency too, because the quarterly reports had to be there on file at the agency—the Winnebago agency.

587 Cross-examination waived.
Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

The foregoing testimony is taken in behalf of the complainant by consent of the parties thereto, before William S. Heller, a stenographer and notary public, at Pender, in the State of Nebraska, on this, the 22nd day of August, 1902. The complainant being represented by Thomas L. Sloan, Esq., and the defendants being represesented by John L. Webster, Esq.

I do hereby certify that the above named Frank A. Peters, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in his presence and by me type-written, and that his signature to the same is waived. That said deposition was taken pursuant to the above agreement of

parties at Pender, Nebraska, on the 22nd day of August, 1902, that both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Notary Public.

My fees:

Swearing 1 witness	.10
5 folios at 20c.	1.00
	$1.10

P'd by counsel for pl'ff.
WM. S. HELLER.

Endorsed: Filed Sep. 3 1902 Geo. H. Thummel, clerk.

588 Thereupon afterwards, to-wit:—on the 22nd day of September 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:—

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

FRANK A. PETERS
v.
UNITED STATES OF AMERICA ET AL. } No. 267, Doc. T.

The Replication of Frank A. Peters, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant, saving and reserving to himself, all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, for replication thereunto saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHARLES E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

589 Thereupon afterwards, to-wit:—on the 26th day of September, 1902, depositions were filed in said case, which said depositions are in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Mable Reese, Defendants.
} Docket T, No. 267. Depositions.

Testimony taken in behalf of the complainant, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 22nd day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp, and the defendants being represented by John L. Webster, Esq.

FRANK A. PETERS, the complainant, produced in his own behalf, being first duly sworn, on his oath testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. State your name?
A. Frank A. Peters.
Q. When did you first come up to the Omaha reservation, Mr. Peters?
A. In 1880.
Q. When next?
A. In 1881.
Q. When did you first make a selection of land up there for yourself?
A. In 1881.

590 Q. Is the land that you then selected is that the part which you now occupy?
A. Yes, sir.

Q. And is the land in litigation in this particular case all yours?
A. Yes, sir.
Q. Who else was up there selecting land at that time?
A. Grandfather.
Q. And who was your grandfather?
A. Antoine Barada.
Q. For whom did he select the land?
A. For himself and Thomas Barada his youngest son, and three of his grand children that were living with him at the time.
Q. Were those members of his family at that time?
A. Yes, sir.

Q. Were you with him when he selected the land?
A. Yes, sir.
Q. Did he mark it?
A. Yes, sir.
Q. How was it marked?
A. Marked with a red stake, the piece of a cultivator tongue, that was drove in the ground.
Q. Is that the land that is known as the red stake claim?
A. Yes, sir.
Q. To whom has it since been allotted, if you know?
A. To Robson & Peabody.
Q. Did you and Antoine Barada see the agent in regard to it?
A. Yes, sir.
Q. Who went with you to the agent?
A. William Provo and my aunt, his wife.
Q. Was Antoine Barada introduced to the agent?
A. Yes, sir.
591 Q. And were you?
A. Yes, sir.
Q. Was Edwards United States Indian agent for the Omaha tribe of Indians?
A. Yes, sir.
Q. What conversation or business did you have with him at that time?
A. Grandfather was asking him about the selection of land, and he told him he had as much right to that selection as the rest of the Indians.
Q. Did you furnish the agent a description of the lands then selected?
A. Yes, sir, we gave him the number of the lands.
Q. Did he look it up from the books and make a record of it?
A. When grandfather asked him, he went and looked at the book and said there was no selections on that land; no one had selected it.
Q. What was your purpose in selecting the land that you then selected?
A. To improve it and make it a home, make a home out of it.
Q. Did you later make a home of it?
A. Yes, sir.
Q. And still occupying it?
A. Yes, sir.
Q. When did you first move up there with your family?
A. In 1883.
Q. What prevented you moving sooner?
A. My wife was pregnant and did not want to leave her folks until after it was over with.
Q. What prevented your settling upon the land when you went up with your family?
592 A. When I first went up?
Q. Yes, sir.

A. They had orders to move, and so removed them to Bancroft to see how it would come out.

Q. Did you later move upon the land?

A. Then I moved back on the reservation.

Q. What was the intention of Antoine Barada in selecting the land if you know?

A. To make a home for himself.

Q. What prevented his going to take the land after he selected it?

A. He went back to Nemaha, Richardson county, and his wife took sick. His grandmother and he finally took sick and died.

Q. What was the condition of her health from the time that he returned from the Omaha reservation to his home up to the time of his death? What was the condition of his wife?

A. She was sick in bed all the time, and he took sick taking care of her; took a bad cold and had pneumonia and died with it.

Q. Have you been school director of school district No. 11 of Thurston county?

A. Yes, sir, I am at present.

Q. Were you such director during the years 1897 and 1898?

A. Yes, sir.

Q. Did you in that capacity or official position receive moneys from the United States Government for any Indian children who went to your school?

A. Yes, sir.

Q. Can you state what Indian children were attendants at your district school during that period for which this money was paid.

A. They were the children of William Barada, Thomas
593 Barada, Lot Sailors, Owen Walker, Edwin Walker and Philip Walker and my family of children.

Q. Your family?

A. My children.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Where is this school district you refer to?

A. It is in Thurston county.

Q. On the reservation or off the reservation?

A. On the reservation.

Q. And is the school you refer to a school governed by the State laws?

A. Yes, sir.

Q. It is not an Indian school?

A. No, sir, but we had Indian children going there.

Q. And who decided that they might attend the school, the directors?

A. The school house was built, and all the children in the district came there. We applied to the Government for a contract for the teaching of the Indian pupils rather.

Q. That does not answer my question. I ask you who decided whether the children should go to the school or not, the board of directors of the school district?

A. Well, now, I do not know as I can answer that question. I do not understand you.

Q. You say all the children that lived within that school district went to that school?

A. Yes, sir.

Q. They went to the school because they lived within the school district?

A. Yes, sir.

594 Q. That was so regardless of whether they had Indian blood in them or whether they were white children?

A. They were Indian children and white children both that went there.

Q. And that school was conducted by white teachers and in the English language?

A. Yes, sir.

Q. Why did you select lands on the Omaha reservation?

A. To make a home for myself.

Q. Well, you had a home in Richardson county before that did you not?

A. Living with my father and mother.

Q. And your father and mother had their allotment on the Nemaha reservation?

A. Yes, my mother had.

Q. And you lived with your mother on that allotment?

A. Yes, sir, until I was married.

Q. When did you first hear there was to be an allotment of lands on the Omaha reservation?

A. I think it was 1882.

Q. Who did you get your information from?

A. I got on the reservation, and they were talking then of having allotments.

Q. Did you hear of it before you came to the reservation, or after you came up there?

A. After I came up; that was the second time. It was the third time that I came up.

Q. How did you come to make a selection before you knew there was to be an allotment?

A. By my grandfather telling there that there was land on the Omaha reservation for us, and we just came up and made

595 selections.

Q. Now when you came up who did you talk with about your selection, who did you talk with first about it?

A. With my relation that was living on the reservation.

Q. Who was it?

A. Mrs. Provo and Mr. Provo.

Q. Who else?

A. Grandfather, and after we went to select and looked over the land we went to the agent of the Winnebago agency.

Q. Who was the agent that you talked with?

A. I cannot remember his name. It was the agent that was in there just before Colonel Warner was agent.

Q. You cannot tell his name?

A. I do not remember the name now.

Q. Did you say anything to the agent yourself?

A. Yes, sir, I talked with him.

Q. What did you say to him?

A. I told him that we came up to select land, and my grandfather done most of the talking.

Q. When was it that you had this talk with the agent?

A. In 1881.

Q. That was before the law was passed permitting the allotment, was it not?

A. Yes, it was before the law was passed.

Q. You knew at that time, did you not, that neither you nor the agent, nor anybody else could make an allotment in 1881, did you not?

A. Well, they were not making an allotment; they were selecting their lands, taking the numbers of them.

Q. Who pointed out to you or gave you the selections of the land that you wanted to select at that time?

596 A. William Provo.

Q. Is that the time that you put down the red stake?

A. Yes, sir, that is the time that grandfather did. I was with him.

Q. Was it you or your grandfather that put down the red stake?

A. Grandfather.

Q. What did you put down after, yourself?

A. I just gave the agent the number of the land.

Q. That is all you did by way of your selection?

A. That I, yes, sir.

Q. Is that the land that you are living on now?

A. Yes, sir.

Q. The same land that you are living on today?

A. Yes, sir.

Q. That is the same land that is reserved for you?

A. Yes, sir.

Re-direct examination.

Questions by Mr. THOMAS L. SLOAN:

Q. For what part of the children attending your district school was this Indian money paid to your district, for the white children or the Indian children?

A. The Indian children.

Witness excused.

By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witness Peters was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, that his said deposition was reduced to writing by myself in the presence of said witness, Frank A. Peters, and by me typewritten, and that his signature thereto is expressly waived.

597 That said deposition was taken by consent of the parties hereto at Omaha, Nebraska, on the 22nd day of September, 1902; that both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing one witness	.10
Certificate	.25
20 folios at 20	4.00
	$4.35

Endorsed: Filed Sep. 26 1902 Geo. H. Thummel, clerk.

598 Thereupon afterwards, to-wit:—on the 26th day of September, 1902, depositions were filed in said case, which said depositions are in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Mabel Reese, Defendants.

Docket T, No. 267.
Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life Insurance building, Omaha, Nebraska, on this 18th day of September, A. D. 1902, the complainant being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendants being represented by John L. Webster, Esq.

CELESTINE BARADA KUHN, produced as a witness in behalf of the complainant, and after being first duly sworn on *his* oath testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. State your name?
A. Celestine Barada Kuhn.
Q. Are you a daughter of Antoine Barada?
A. Yes, sir.

Q. Where are you living?
A. On the reservation.
Q. The Omaha reservation?
A. Yes, sir.
Q. Upon what land?
A. The land I picked out for my home.
599 Q. The land that is in controversy which you claim as an allotment?
A. Yes sir.
Q. Are there any Indian claimants for that land?
A. I do not know.
Q. Is that the land which you and your family occupied? Is that land which the allotting agent Rankin set apart for you?
A. Yes, sir.
Q. When did you first move up to the Omaha reservation, you and your family?
A. The first time?
Q. Yes.
A. 19 years ago.
Q. In the spring of 1883, was it?
A. Yes, sir.
Q. Were you living there at the time the Omaha tribe of Indians had their council consenting to make allotments?
A. I was.
Q. Do you remember going to the reservation at any earlier period in your life?
A. Yes, I was here twice before.
Q. About when was that?
A. 1863 or 1864.
Q. You went up in 1863?
—. ——.
Q. From what place?
A. From Richardson county, Nebraska.
Q. Is that the Nemaha half breed tract?
A. Yes, sir.
Q. With whom did you go?
A. I went with my father and mother and brother and my aunt Mary Paul, and Mrs. Cabana.
600 Q. For what purpose did you go up there?
A. To draw our annuity.
Q. Did your family get it?
A. We did.
Q. With whom did you go the second time?
A. With Mitchell Barada and Antoine Cabana and Mrs. Provo and mother and my brother Tommy.
Q. Younger than you?
A. Yes, sir.
Q. And for what purpose did you go that time?
A. To draw our annuity.

Q. Did you get it?
A. We did.
Q. Who got it?
A. Mitchell Barada.
Q. Did you see the money?
A. I seen it.
Q. Who were the members of the—who were the children of Antoine Barada at that time?
A. There was Euphrasia Peters and Michael Barada, and Julia Provo, and William Barada, and myself, and brother Tom, younger than me.

Cross-examination of witness waived.
Witness excused.
By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

FULTON PETERS, produced as a witness in behalf of the complainant, and after being first duly sworn on his oath, testified as follows:

601 Direct examination by Mr. THOMAS L. SLOAN:

Q. You are the husband of Euphrasia Peters?
A. Yes, sir.
Q. What year were you married?
A. 1856.
Q. Where?
A. St. Louis.
Q. Where did you move to immediately after your marriage?
A. On the Nemaha reservation, half breed reservation.
Q. With whom did you go to the reservation?
A. With Barada and Mr. Sloan and my family, my wife.
Q. After reaching the Nemaha reservation where did Mr. Barada go?
A. He came to the Omaha reservation.
Q. Do you know for what purpose?
A. To draw his annuity.
Q. Did he get it?
A. Yes, sir.
Q. Was any portion of that annuity money belonging to your wife?
A. Yes, sir.
Q. Did she receive it?
A. Yes, sir.
Q. Did she receive any other annuity payments?
A. Yes, sir.
Q. State when they were?
A. Along in 1863 and 1864.

Q. Where were you in 1865?
A. I was working in the Government employ in the navy yard.
Q. Whereabouts?
A. At St. Louis.
Q. By whom were you employed at that time?
A. By the Government.
602 Q. The United States?
A. John Elson was the Government contractor building boats. The two last turrets were built on Plum street in St. Louis.
Q. Was that a Government institution?
A. Yes, sir, at that time.
Q. When did your wife first come to the Omaha reservation?
A. She came here in 1881 or 1882.
Q. Did she select land at that time?
A. Yes and had some of it broke.
Q. Who did the breaking?
A. Mr. Sloan; T. L. Sloan and another man, a young man then.
Q. When did you and your family together move up to the Omaha reservation?
A. In 1883.
Q. What time of the year?
A. Along about the first of April.
Q. Were you living on the reservation at the time the tribe consented to the allotment of lands?
A. Yes, sir.

Cross-examination.

Questions by Mr. JOHN L. WEBSTER:

Q. The Sloan that you speak of that broke up the land is Thomas L. Sloan, the attorney for the complainant?
A. Yes, sir, at the present time.
Q. I wonder what the people would have done if it had not been for Thomas L. Sloan?
A. We would probably get you or Mr. Clapp to defend us.
Q. So you want a lawyer that selects lands, and breaks lands and tries a lawsuit?
A. He did not select it; my wife selected it. He had a yoke of cattle and he wanted a job at the time. He was no lawyer then. He wanted work and we gave him a job.
603 Q. When did you first come to the Omaha reservation?
A. In 1883.
Q. You was not here in 1881?
A. No, sir, my wife came up.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named Celestine Barada Kuhn and Fulton Peters, witnesses, were first duly sworn to testify the truth, the whole truth and nothing but the truth, that their depositions were reduced to writing in the presence of the witnesses respectively, and by me type-written, and that their signatures to said depositions were waived. That said depositions were taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska, on the 18th day of September, 1902. That both complainant and defendants were present by counsel at the taking of said depositions.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 2 witnesses	.20
14 folios at 20c	2.80
	$3.00

Endorsed: Filed Sep. 26 1902 Geo. H. Thummel, clerk.

604 Thereupon afterwards, to-wit:—on the 1st day of October, 1902, depositions were filed in said case, which said depositions are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Mable Reese, Defendants.

Docket T, No. 267.
Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life Insurance building, Omaha, Nebraska, on this 26th day of September, 1902, the complainant being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendants by John L. Webster, Esq.

WILLIAM BARADA, called as a witness in behalf of the complainant, and after being first duly sworn, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. What relation do you sustain to Mr. Frank A. Peters, the complainant in this action?

A. I am a brother to his mother. He is a nephew of mine.

Q. Who was his mother?
A. Euphrasia Barada Peters.
Q. Did you know Antoine Barada during his life time?
A. Yes, sir.
Q. What relation was he to you?
A. He was my father.
Q. Did you know of his having received annuity moneys
605 from the Omaha tribe of Indians?
A. Yes, sir.
Q. Where was he when he received these annuity payments?
A. The first time he received them he was in St. Louis.
Q. Where the next time?
A. The next payment was, he lived on the Omaha reservation.
Q. Who delivered the annuity payment to him at the Omaha reservation?
A. I could not say; some of his relation- though.
Q. How often did that occur?
A. Once a year. Generally in the fall; sometimes in the spring.
Q. Do you remember any of the persons who delivered to him his annuity money?
A. My oldest brother did once, and Henry Fontenelle another time.
Q. And do you know the amount that was delivered to him on each of those occasions?
A. No, I cannot remember the amount.
Q. Do you know for whom that money was paid?
A. It was for the whole family at that time; it was drawn for the whole family.
Q. Did you know Margaret Sloan during her life time?
A. Yes, sir.
Q. What relation is she to you?
A. She was an aunt of mine; my father's sister.
Q. Were you with her at the Omaha agency in attendance in the councils at any time?
A. I was once, yes, sir; I took her down and stayed with her while she was there.
Q. From where did you take her?
A. From where?
Q. Yes, sir.
A. From her place where she lived near Bancroft. I was
606 living on the place at the time.
Q. Were you present during the council?
A. Yes, sir.
Q. Did anything come up with reference to Margaret Sloan at that time?
A. Yes, sir, she asked to be put on the roll to draw payments.
Q. Who did she ask?
A. Well, she had, I think Prairie Chicken got up first; and several different ones got up and made a talk for her.

Q. Was that interpreted to the agent?
A. Yes, sir.
Q. Was you present to hear that interpretation?
A. Yes, sir.
Q. State what was said?
A. John Pilcher was the interpreter. He told them that the old lady asked to be put on the roll, and she was getting old, that she was an Omaha, and she wanted to draw annuity, and the council gave their consent, so Pilcher interpreted back to the agent to put her on the roll. Frank Warner was the agent at the time. After they got through he told the council that he would refer the matter to Washington, and he said he could not put her on the roll himself unless the authorities at Washington would agree to it. He said he would refer the matter to Washington, and as soon as he heard from them he would act.
Q. About when was that?
A. I think it was in 1888, the fall of 1888. I am pretty certain it was.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. She was not put on the pay roll?
607 A. She was not at that time; no, sir, I understood she was put on afterwards.
Q. The fact is she was not?
A. She drew payments.
Q. You mean the payment made by Spencer?
A. Yes, sir.
Q. Do you talk the Indian language?
A. No, sir.
Q. You spoke of your father getting annuity when in St. Louis?
A. Yes, sir.
Q. When was that?
A. 1855.
Q. And how did you come to know that he got annuity money in 1855?
A. Well, I was pretty near big enough to know then. I was five or six years old, and he was very poor, and that helped us come to the Nemaha after the next year.
Q. Let us keep back to this St. Louis matter. Is your only knowledge of that payment based on the fact that you was five or six years old, and therefore old enough to know?
A. I remembered my father coming up here, that he came up the Missouri river and came back, and bringing back some money.
Q. How do you know that was annuity money that he brought back?
A. I know from what he said.

Q. Your knowledge of that is limited to the fact of what your father said at a time when you was five or six years old?
A. Yes, sir.
Q. Now you speak of a time when he got annuity money when on the Nemaha reservation?
A. Yes, sir.
Q. When was that?
608 A. 1856, the fall of 1856 he came up from there and hired a horse and rode up.
Q. 1855 and 1856?
A. 1856.
Q. Did you come up with him?
A. No, sir.
Q. You did not see him receive the annuity money at that time?
A. No, sir, I never was up here with him.
Q. Your knowledge of that is based on what you heard said about it in the family?
A. Yes, sir.
Q. How old are you now?
A. I am 53 or 54.

Witness excused.
By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

I hereby certify that the above named witness, William Barada was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his said deposition was reduced to writing in the presence of the said witness, and by me typewritten, and that his signature to said deposition was expressly waived. That said deposition was taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska, on the 26th day of September, 1902. That both complainant and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
12 folios at 20	2.40
1 certificate	.25
	$2.75

Endorsed: Filed Oct. 1 1902 Geo. H. Thummel, clerk.

609 Thereupon afterwards, to-wit:—at the May 1902 term of said court and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of

record in Journal No. 1 of the proceedings of said court had on said day, to-wit:—

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Mabel Reese, Defendants.
Doc. T, No. 267. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is, therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

610 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, assignment of errors was filed in said case, which said assignment is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA and MABEL Reese, Defendants.
Docket T, No. 267. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Third. The court erred in holding that the complainants *were* not — members of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

611 Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Frank A. Peters and children were not entitled to claim and have allotted to them the land described in plaintiff's bill of complaint, to-wit: Lots two (2), three (3) and four (4) of section eight (8); lots one (1) and two (2), and the west half of the north east quarter of section seventeen (17); lots one (1) and two (2) of section twenty (20), and lots one (1), and two (2) of section twenty-nine (29) all in township twenty-four (24) north, of range eight (8) east of the 6th P. M.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainants.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason
612 thereof.

FRANK A. PETERS,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13, 1903 Geo. H. Thummel, clerk.

613 Thereupon afterwards, to-wit: on the 13th day of October, 1903, petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

FRANK A. PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA and MABEL Reese, Defendants.

Docket T, No. 267. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for an allowance of an appeal in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

FRANK A. PETERS,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

614 And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

And thereupon, to-wit: on the said 13th day of October, 1903, bond on appeal was filed in said case, which said bond is in words and figures following, to-wit:

615 267, T.

Know all men by these presents, that we, Frank A. Peters, Lot Sailors, are held and firmly bound unto The United States of America and Mabel Reese in the full and just sum of one hundred dollars to be paid to the said The United States of America and Mabel Reese heirs, executors, administrators, or as-

signs; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Frank A. Peters plaintiff and The United States of America, defendant judgment was rendered against the said Frank A. Peters, and the said Frank A. Peters has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America and Mabel Reese, citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Frank A. Peters shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

FRANK A. PETERS. [SEAL.]
LOT SAILORS. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

616 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

617 The United States of America to The United States of America and Mabel Reese, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Frank A. Peters is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of

October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2010.—No. 267. United States circuit court, district of Nebraska. Frank A. Peters *vs.* United States *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

617*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, and Mabel Reese, by handing to and leaving a true and correct copy thereof with John L. Webster their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

617*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908.}

SUSAN M. BONNEVIER,
Notary Public.

618 Thereupon afterwards, to-wit: on the 10th day of May 1901, an amended bill of complaint was filed in said case, which said bill of complaint is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

WALTER PETERS, Complainant, *vs.* THE UNITED STATES OF AMERICA, Thomas Webster, Charles Grant, Minor, and Charles P. Mathewson, Defendants.	No. 268, Doc. T. Amended Bill of Complaint.

To the honorable the judges of the said court:

Walter Peters brings this, his bill of complaint, against the United States of America, and thereupon your orator complains and states that he is a member of what is, or until recently was known as the Omaha tribe of Indians of Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and in the treaties hereinafter set forth. That he is of what is known as mixed blood and is a lineal descendant from one Michael Barada who intermarried with one Taegleha Haceinda, an Indian woman of the same tribe. That your orator and his ancestors back to said Michael Barada and his said wife, have continually maintained their domicile with the said tribe and maintained tribal relation, therewith so long and so far as any tribal relations have been maintained by the said tribe, and has participated in the property and other rights of the said tribe and been recognized by the said tribe and the members thereof as a member of the said tribe and entitled to all its rights and privileges.

619 And further complaining your orator says that on the 16th day of March A. D. 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof they received their present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including Euphrasia Peters. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large vol. 10, page 1043, to which for greater certainty your orator refers.

And your orator further says that on the 6th day of March A. D. 1865, another treaty was entered into between said parties wherein was provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half

and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14, page 667, to which for greater certainty your orator begs to refer.

And further showing your orator says that on the 7th day of August A. D. 1882, an act was approved that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation, either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, to each other person under eighteen years of age one sixteenth of a section. That all allotments should be *selected by the Indians.* Heads of families selecting for
620 their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22, page 341, to which for greater certainty your orator refers.

Your orator further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act on December, 1884, and at subsequent times since.

Your orator further shows that on the 3rd day of March A. D. 1893, an act of Congress was passed amending or extending the act of August 7th, 1882, providing that with the consent of the Omaha tribe of Indians, expressed in open council, further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893, but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council, May 1899, and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice of the claimants.

And your orator further shows that he is a son of Euphrasia Peters who is a daughter of Antoine Barada, who in turn was a son of Michael Barada and Taegleha Haceineda who was as herein
621 before set forth, an Omaha Indian woman and a member of said tribe, that ever since the year 1885 has continuously resided upon the Omaha reservation. That your orator first selected land in the year 1887, and was upon the reservation at the time the Omahas consented to accept the act of 1882.

That your orator selected for himself the E. ½ of S. E. ¼ of section 35, township 25 N. range 7 east, and the N. W. ¼ of N. E. ¼ and N. E. ¼ of N. W. ¼ of section 34, township 25 N. range 7 east. Amounting to 160 acres, as a head of a family.

That your orator is a member of the tribe by blood and descent and in accordance with the laws and customs of the Omaha tribe.

That your orator has been refused an allotment by the Department of the Interior.

That since the commencement of this suit assignments have been made of a part of the land to Thomas Webster the N. E. ¼ N. W. ¼ of section 34 and the N. W. ¼ of N. E ¼ of section 34 to Charles Grant,—Thomas Webster having received an allotment under the act of August 7th, 1882, — that because of their claims thereunder to the lands in litigation they have become necessary parties.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land to place into possession the allottee or lessee, and that he threatens to place into possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainant who is now in possession. That because of the position of said
622 Charles P. Mathewson his claim of authority over the land in controversy and his threats that he will remove your orator from the land make him a necessary party to this suit. And your orator further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit court jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large, on page 305, which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator begs to refer.

Your orator further states that the defendant, The United States of America, claims that by virtue of the 4th art. of the treaty of March 6th, 1865, it was provided that the assignment — be made in limited

quantities from the lands held by said tribe in common to
623 the individual members thereof was confined to the members thereof of full blood, "including their half breed and mixed blood relatives now residing with them;" and the defendant claims that your orator and his ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your orator admits that he and his ancestors were temporarily absent from the reservation at the time, but claim that such absence did not deprive them of the right of residence on the reservation nor the rights of allotment under the treaty of March 6th, 1865, nor the rights of allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26, 1871, contained the names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, *not* at the time of the making the schedule referred to; that under the provisions of the act of August 7th 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, *not* at the
624 time of the approval of the schedule by the chiefs, the agent the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation but who at all times and at the time of the treaty of March 6th, 1865, and ever since resided away from the reservation.

Your orator further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had been already provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your orator further states that the defendant, The United States claims that the complainant or his ancestor has received allotments of lands under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotment under the policy of the Indian office neither the complainant nor Euphrasia Peters his ancestor are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians. Your

orator admits that his ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830, as a half breed of the Omaha tribe of Indians, that the quantity so assigned was one half of the amount provided by said treaty, and that the said allotment was not accepted by her nor given to her in consideration of the relinquishment of any right than those to which she was entitled on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the
625 10th art. of the treaty of July 30th, 1830, sums of money which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March 1865, and the subsequent act of Congress of August 7th, 1882; that your orator has not in any manner assigned or relinquished his right or claim to the benefit under the various laws and treaties granted to the Omaha tribe of Indians, neither has the United States by the executive department of the Government nor by the enactment of any law authorized this complainant or his ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of his tribe has been accepted or approved by the United States or any of its officers.

Wherefore your orator shows to your honors that he is without a remedy at law and remediless in the premises unless relieved by your honors in this court of equity, and he therefore prays the aid of the court in the premises, and that said defendants, The United States of America, Thomas Webster, Charles Grant and Charles P. Mathewson may answer your orator's bill without oath, answer under oath being expressly waived. That it be ordered and decreed that the patents issued to Thomas Webster and Charles Grant, by his next friend Megratahe Grant, are null and void, and that the selection as made by Walter Peters for himself is prior and
626 superior to their claim and is his allotment and that he is entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orator further prays for a preliminary order of injunction against the defendant- Thomas Webster, Charles Grant, by his next friend Megratahe Grant and Charles P. Mathewson, enjoining and restraining each of them, their agents and employés from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made

perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court direct to the United States of America, Thomas Webster, Charles Grant by his next friend Megratahe Grant, and Charles P. Mathewson, therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed May 10 1901, Geo. H. Thummel, clerk.

627 Thereupon afterwards, to-wit: on the 2nd day of July, 1901, an answer was filed in said case, which said answer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

WALTER PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, Thomas Webster, Charles Grant, a Minor, and Charles P. Mathewson, Defendants.

Doc. T, No. 268. Answer to Amended Bill of Complaint.

The answer of The United States of America, Thomas Webster, Charles Grant, a minor, and Charles P. Mathewson, defendants, to the amended bill of complaint of Walter Peters, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer, say:

1. These defendants deny that the complainant is an Omaha Indian and deny that the complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary these defendants aver that the said complainant is a white man, and a

citizen of the United States, and that his ancestors were white persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe
628 of Indians of Nebraska; and these defendants deny that the complainant or his ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainant claims to trace his lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe and therefore leaves the complainant to his proof in that regard.

That there was born to the said Michael Barada and his wife, in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vien continued to reside in the city of St. Louis or in Rich-
629 ardson county, Nebraska, with the exception of about two years, until some time after the approval act of Congress of August 7, 1882, (22 U. S. Stats. at Large, 341) hereinafter more particularly referred to. That to the said Antoine Barada and his wife Josephine there was born a daughter named Euphrasia (the mother of this complainant) and the said Euphrasia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and never was on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Euphrasia Barada, so being a white woman and a citizen of the United States, married a white man named Fulton Peters, a white man of German nationality and a citizen of the United States.

There was born to the said Fulton Peters and his wife Euphrasia, a son named Frank A. Peters, who is the complainant herein, and the said Frank A. Peters, being such white person and citizen of the United States, taking the status of his father continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when he came to the Omaha reservation with his parents, with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty
630 included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Frank A. Peters, being only one sixteenth Indian blood, and he not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant
or his ancestors, and which said schedule when so approved
631 by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say: That in a suit lately pending in the circuit court of the United States for the district of

Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters, and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontanelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walters ——, Mary Sailors or any of the immediate antecedants or descendants of said parties, so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant.

632 That the said Antoine Barada was the grandfather of this complainant, and the said Euphrasia Peters and Fulton Peters were the parents of this complainant, and Mary Peters and Frank Peters and Mary Sailors were brothers and sisters of complainant.

4. These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or

receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and form time to time individual cases were reported to the department by the special agent charged with the
633 work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

634 Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of

Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not
635 residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; more-
636 over, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation, and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born- upon the duly certified census roll of 1871, or their descendant-, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit, William Barada, Mary Sailors, Frank Peters,
Walter Peters, Luke Sailors and others including this plain-
637 tiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We knew that this Peters family tried to take land when our reservation was allotted to us four years ago: that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters — had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations
638 have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the *land patented to the tribe, shall be held* just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

639 And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to

one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865, (14 Statutes 668) was made. (The — article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name
640 is not born- upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882, (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relation- residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

641 5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation,
7. These defendants further aver that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto were

reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation and upon their failure so to remove said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors and Frank Peters to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians, then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested *that* the Hon. Secretary of War to cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Walter Peters, Luke Sailors and Frank Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of
642 Frank Peters and which included complainant as he was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontanelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of

January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the
643 defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. These defendants for further answer avers that under article 10, of the treaty of July 15, 1830, (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to Euphrasia Peters for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Euphrasia Peters and her descendants including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

These defendants for further answer deny that the complainant is entitled to an allotment of 160 acres as the head of a family, and avers that the complainant at the date of the approval of the act of Congress of August 7, 1882, being the act under which complainant claims the right of an allotment of land, was then a single person, but 15 years of age, and that the complainant was such single person at the date of the amendatory act of March 3, 1893, and as such single person would not be entitled to have in any event more than 80 acres of land.

These defendants further aver that the United States allotting agent has reserved for the complainant pending this litigation, the E. ½ of the S. E. ¼ of section 35, township 25, north range
644 7 E., being 80 acres of land and which said reservation has been noted upon the surveyed maps in the office of Commissioner of Indian Affairs, awaiting the final determination of this suit; and that the land so reserved is the land and the only land occupied by the complainant; and these defendants deny that the said complainant either selected or occupied any of said lands at or prior to the date of the approval of the said act of Congress of August 7, 1882, but aver to the contrary that at said time the said complainant did not live upon the said reservation, but moved on to the reservation in the year 1888, and then for the first time made claim to the lands above described.

These defendants further aver that the United States allot-ing agent, appointed by the Interior Department to investigate selections and make allotments of lands, investigated, ascertained and found as a fact, that the complainant was not entitled to an allotment of any of the lands claimed by him, and reported his said

findings to the Interior Department, and which said findings and report have been approved by the said department.

That the said United States allot-ing agent did find upon investigation that the N. W. ¼ of the N. E. ¼ of section 34, township 25, north range 7, E., had been selected by Frank Grant for his son Charles Grant, and the said United States allotting agent did make to the said Charles Grant an allotment thereof, and said United States allotting agent did make an allotment to Thomas Webster, of the N. E. ¼ of the N. W. ¼ of section 34, township 25, north *range* 7, E., and thereafter made his official report to the Commissioner of Indian Affairs of said allotments respectively, and that the said Charles Grant and Thomas Webster were entitled to the lands allotted to them respectively as above described, and which
645 said allotments were subsequently approved by the Commissioner of Indian Affairs, and by the Secretary of the Interior, and patents therefore have been issued to the said Charles Grant and the said Thomas Webster respectively, under date of April 11, 1900, and which said allotments were made and the said patents issued in the regular and *do* course of business.

These defendants further aver that the complainant herein, did not have any prior or superior or vested right to the land so patented to the said Charles Grant and to the said Thomas Webster, and that the said allotments to them and the said patents to them were made in all respects *and* conformity to law.

10. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complain*ant* demanded. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMER-,
United States Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 2 1901 Geo. H. Thummel, clerk.

646 Thereupon afterwards, to-wit: on the 21st day of August, 1902, a stipulation of evidence was filed in said case, which said stipulation is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

WALTER PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, THOMAS Webster, Charles Grant, a Minor, and Charles P. Mathewson, Defendants.
Doc. T, No. 268.
Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Dan Webster will testify that in the year 1893, he was looking around for land to which he might make claim for Thomas Webster, and found that Frank Grant (he was the husband of Me-gra-ta-he Grant and the father of Charles Grant, John Grant and Poncasa Grant) was breaking around the N. E. ¼ of the N. W. ¼ of section 34, township 25, range 7, (being land allotted to Thomas Webster) and that he said to Frank Grant that he would like to have that 40 acres of land, and that he then gave Grank Grant $10.00 for the claim. He will further testify that at that time (being the year 1893) Frank Grant made claim for his son Charles Grant, N. ½ of the N. E. ¼ of section 34, township 25, range 7, and marked out the land by plowing around it; and will further testify that Charles Grant is
647 now dead, and thinks that Charles Grant died in 1893.
William Springer says he thinks the pay rolls will show that Chas. Grant died in 1893.

Thomas L. Sloan will testify for complainant; that in 1893 Thomas L. Sloan enclosed by fence for pasture the N. ½ of S. E. ¼ and N. E. ¼ and E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼ of section 34, T. 25, N. R. 7 in pasture and used it two years. That he sold the fence to Geo. Chauncey who used and paid the agent for it in '96. That ever since it has been and is now in the possession of Walter Peters, Josephine Mitchell, Jacob Peters and John M. Sloan.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

648 Thereupon afterwards, to-wit: on the 22nd day of September, 1902, a replication was filed in said case, which said replication is in the words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska.

WALTER V. PETERS
v.
UNITED STATES OF AMERICA ET AL. } No. 268, Doc. T.

The Replication of Walter V. Peters, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant, saving and reserving to himself, all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendants for replication thereunto, saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainants.

Endorsed: Filed Sep. 22 1902. Geo. H. Thummel, clerk.

649 Thereupon afterwards, to-wit: at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal "1" of said court, to-wit:

WALTER PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, Thomas Webster, Charles Grant, a Minor, and Charles P. Mathewson, Defendants. } Doc. T, No. 268. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the re-

spective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902. Geo. H. Thummel, clerk.

650 Thereupon afterwards to-wit:—on the 13th day of October, 1903, assignment of errors was filed in said case, which said assignment of errors is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

WALTER V. PETERS, Complainant, *vs.* THE UNITED STATES OF AMERICA, Thomas Webster, and Charles Grant, Defendants.	Docket T, No. 268. Assignment of Errors.

Comes now the complainant in the above entitled vause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construcing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

651 Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Walter V. Peters was not entitled to claim and have allotted to him the land described in plaintiff's bill of complaint, to-wit: The east half of the south east quarter of section thirty-five; the north west quarter of the north east quarter, and the north east quarter of the north west quarter of section thirty-four (34) all in section twenty-five (25), north of range seven (7), east.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed, and that complainant by restored to all things lost by reason
652 thereof.

WALTER V. PETERS,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13, 1903. Geo. H. Thummel, clerk.

653 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

WALTER V. PETERS, Complainant, vs. THE UNITED STATES OF AMERICA, Thomas Webster, and Charles Grant, Defendants.	Docket T, No. 268. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered

in the above entitled cause on the 8th day of November, 1902, does as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

WALTER V. PETERS,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

654 And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

And thereupon, to-wit: on the said 13th day of October, 1903, bond on appeal was filed in said case, which said bond on appeal is in words and figures following, to-wit:—

655 268, T.

Know all men by these presents, that we, Walter V. Peters, W. K. Mitchell are held and firmly bound unto The United States of America, Thomas Webster and Charles Grant, in the full and just sum of one hundred dollars to be paid to the said The United States of America, Thomas Webster and Charles Grant, heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Walter V. Peters plaintiff and The United States of America, Thomas Webster & Charles Grant defendant judgment was rendered against the said Walter V. Peters and the said

Walter V. Peters *has* obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, Charles Grant, Thomas Webster citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Walter V. Peters shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

WALTER V. PETERS. [SEAL.]
W. K. MITCHELL. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

656 Thereupon afterwards, to-wit: on the said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

657 The United States of America to the United States of America, Thomas Webster, and Charles Grant, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Walter V. Peters is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2009. No. 268 United States circuit court, district of Nebraska. Walter V. Peters *vs.* United States, *et al.* Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

657*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Thomas Webster, and Charles Grant, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

657*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

658 Thereupon afterwards, to wit:—on the 10th day of May, 1901, an amended bill of complaint was filed in said case, which said amended bill of complaint is in words and figures following, to wit:—

In the Circuit Court of the United States within and for the District of Nebraska.

JACOB PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Stella Hallowell, and Joseph B. Hallowell, Defendants.

269, T. Amended Bill of Complaint.

To the honorable the judges of the said court:—

Jacob Peters brings this his bill of complaint against the United States of America, and thereupon your orator complains and states that he is a member of what is, or until recently was known, as the Omaha tribe of Indians of Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and in the treaties hereinafter set forth. That he is of what is known as mixed blood and is a lineal descendant from one Michael Barada who intermarried with one Taegleha Haceinda, an Indian woman of the said tribe. That your orator and his ancestors back to said Michael Barada and his said wife, have continually maintained their domicile with the said tribe and maintained tribal relations therewith so long and so far — any tribal relations have been maintained by the said tribe, and has participated in the property and other rights of the said tribe and been recognized by the said tribe and the members thereof as a member of the said tribe and entitled to all its rights and privileges.

659 And further complaining your orator says that on the 16th day of March A. D. 1854 a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America where and whereby the tribe ceded to the United States certain lands in lieu whereof they received their present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including Euphrasia Peters. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large, vol. 10, page 1043, to which for greater certainty your orator refers.

And your orator further says that on the 6th day of March, A. D. 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large vol. 14 page 667 to which for greater certainty your orator begs to refer.

And further showing your orator says that on the 7th day of August A. D. 1882, an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the

Secretary of the Interior should allot certain lands of the Omaha reservation, either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one-quarter of a section, to each person over eighteen years of age one-eighth of a section; to each orphan child one-eighth of a section, to each other person under eighteen years of age one-sixteenth of a section. That all allotments
660 should be *selected by the Indians*, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22 page 341 to which for greater certainty your orator refers.

Your orator further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act on December 1884 and at subsequent times since.

Your orator further shows that on the 3rd day of March A. D. 1893 an act of Congress was passed amending or extending the act of August 7th 1882 providing that with the consent of the Omaha tribe of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd 1893 but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council May 1899 and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimants.

And your orator further shows that he is a son of Euphrasia Peters who is a daughter of Antoine Barada, who in turn was a son of Michael Barada and Taegleha Haceineda who was as herein-
661 before set forth, an Omaha Indian woman and a member of said tribe that ever since the year 1885 he has continuously resided upon the Omaha reservation. That your orator first selected land in the year 1887 and was upon the reservation at the time the Omahas consented to accept the act of 1882.

That your orator selected for himself the N. ½ of S.W. ¼ of section 35, township 25 N. range 7 east and the N. ½ of S. E. ¼ section 34, township 25 N. range 7 east. amounting to 160 acres as a head of a family. That your orator is a member of the tribe by bloed and descent and in accordance with the laws and customs of the Omaha tribe. That your orator has been refused an allotment by the Department of the Interior.

That since the commencement of this suit assignments have been made of a part of the land to Stella Hallowell the N. E. of S. E. ¼ of section 34 and the N. W. ¼ of S. E. ¼ of section 34 to Joseph B. Hallowell, both of whom have had allotments under the act of August 7th, 1882 and that because of their claims thereunder to the lands in litigation they have become necessary parties.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land to place in possession the allottee or lessee, and that he threatens to place into possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainants who are now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land on controversy and his threats that he will remove your orator from the land make him a necessary party to this suit. And your
662 orator further shows to your honors that by an act of Congress approved the 15th day of August 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress or who claim to be so entitled under any allotment act, or any grant made by Congress may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor or any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305 which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator begs to refer.

Your orator further states that the defendant The United States of America'- claims that by virtue of the 4th art. of the treaty of March 6th, 1865, it was provided that the assignment be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood "including their half breed and mixed blood relatives now residing with them," and the defendant claims that your orator and his ancestors were not residing on the reservation at that time and therefore not entitled to land
663 under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your orator

admits that he and his ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation nor the rights of allotment under the treaty of March 6th, 1865 nor their rights of allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865 as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871 contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to; that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882 who were not residing on the Omaha reservation at the time of making the treaty of March 6th 1865 nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent, the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation but who at all times and at the time
664 of the treaty of March 6th 1865 and ever since resided away from the reservation.

Your orator further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your orator further states that the defendant, The United States claims that the complainant or his ancestor has received allotments of lands under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotment under the policy of the Indian Office neither the complainant nor Euphrasia Peters his ancestor are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your orator admits that his ancestors received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830 as a half breed member of the Omaha tribe of Indians that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by her nor given to her in consideration of the relinquishment of any other right than those to which she was entitled on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th, 1830, sums of money, which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th ch. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation
665 and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March 1865 and the subsequent act of Congress of August 7th, 1882; that your orator has not in any manner assigned or relinquished his right or claim to the benefit under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Government nor by the enactment of any law authorized this complainant or his ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of his tribe has been accepted or approved by the United States or any of its officers.

Wherefore your orator shows to your honors that he is without a remedy at law and remediless in the premises unless relieved by your honor in this court of equity and *they* therefore pray- the aid of the court in the premises and that said defendants, The United States of America and Charles P. Mathewson, Stella Hallowell and Joseph B. Hallowell may answer your orator's bill but without oath, answer under oath being expressly waived. That it be ordered and decreed that the patents issued to Stella Hallowell and Joseph B. Hallowell are null and void and that the selection as made by Jacob Peters for himself is prior and superior to their claim and is his allotment and that *his* is entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orator further prays for a preliminary order of injunction against the defendants Charles P. Mathewson, Stella Hallowell and Joseph B. Hallowell enjoining and restraining each of them their agents and employees from in any manner interfering with the possession of the land herein described and that at the termina-
666 tion of this suit that said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court direct- to The United States of America, Charles P. Mathewson, Joseph B. Hallowell and Stella Hallowell therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand

to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed May 10 1901 Geo. H. Thummel, clerk.

667 Thereupon afterwards, to wit:—on the 13th day of July, 1901, an answer was filed in said case, which said answer is in words and figures following, to wit:—

In the Circuit Court of the United States for the District of Nebraska.

JACOB PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Stella Hallowell, and Joseph B. Hallowell, Defendants.

No. 269, Doc. T.
Answer to Amended Bill of Complaint.

The answer of the United States of America, Charles P. Mathewson, Stella Hallowell, and Joseph B. Hallowell, defendants, to the amended bill of complaint of Jacob Peters, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer say:

1. These defendants deny that the complainant is an Omaha Indian and deny that the complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary these defendants aver that the said complainant is a white man, and a citizen of the United States, and that his ancestors were white persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that the
668 complainant or his ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainant claims to trace his lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to his proof in that regard.

That there was born to the said Michael Barada and his wife, in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a free born white person, and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha tribe.

That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vien continued to reside in the city of St. Louis or in Rich-
669 ardson county, Nebraska, with the exception of about two years, until some time after the approval — act of Congress of August 7, 1882, (22 U. S. Stats. at Large, 341) hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Euphrasia (the mother of this complainant) and the said Euphrasia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and was never on the Omaha reservation until after the act of Congress of August 7, 1882; that the said Euphrasia Barada, so being a white woman and a citizen of the United States, married a white man named Fulton Peters, a white man of German nationality and a citizen of the United States. There was born to the said Fulton Peters and his wife Euphrasia, a son named Jacob Peters, who is the complainant herein, and the said Jacob Peters, being such white person and citizen of the United States, taking the status of his father continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when he came to the Omaha reservation with his parents, with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty
670 included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Jacob Peters, being only one sixteenth Indian blood, and he not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882 (22 U. S. Statutes at Large, 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit:—March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior January 26, 1871, and which said schedule did not contain the names of the complainant or his ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior De-
671 partment, that neither the complainant nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontanelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States Indian

agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or descendants of said parties, so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant. That the said Antoine Barada was the
672 grandfather of this complainant, and the said Euphrasia Peters and Fulton Peters were the parents of this complainant, and Mary Peters and Frank Peters and Mary Sailors were brothers and sisters of complainant.

4. These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of land, and that the said Peters family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotments of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding
673 the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13,

1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

674 If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able toprove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not — all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians.

Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case.

The case was stated as follows:

675 "Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nehama reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be 'the members of the tribe including their half-breed or mixed blood relations now residing with them.'

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nehama and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all

676 the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation, and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were borne upon the duly certified roll of 1871, or their descendant-, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit, William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:—

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short,
677 we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe, shall be held just as safe as our individual land.

678 If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land.

The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority te remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the

679 said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters thaugh a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865, (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were

residing with them at the date of the treaty.) That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

680 Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. These defendants further aver that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require

681 Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors and Frank Peters, to leave the said reserva-

tion, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter ——, Luke Sailors and Frank Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as he was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. These defendants further aver that Margaret Sloan,
682 Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontanelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. These defendants for further answer avers that under article 10, of the treaty of July 15, 1830, (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5 (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was

issued to Euphrasia Peters for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854,
683 the rights of Euphrasia Peters and her descendants including complainant were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further allotment of land.

These defendants for further answer deny that the complainant is entitled to an allotment of 160 acres of land, as the head of a family, and denies that the complainant is a head of a family, and avers that the complainant at the date of the approval of the act of Congress of August 7, 1882, being the act under which complainant claims the right of an allotment of land, was then a single person, but — years of age, and that the complainant was such single person at the date of the amendatory act of March 3, 1893, and as such single person would not be entitled to have in any event more than 80 acres of land.

These defendants further aver that the United States allotting agent has reserved for the complainant pending this litigation, the N. ½ of the S. W. ¼ of section 35, township 25, north range 7 E., being 80 acres of land and which said reservation has been noted upon the surveyed maps in the office of Commissioner of Indian Affairs awaiting the final determination of this suit; and that the land so reserved is the land and the only land occupied by the complainant; and these defendants deny that the said complainant either selected or occupied any of said lands at or prior to the date of the approval of the said act of Congress of August 7, 1882, but aver to the contrary that at said time the said complainant did not live upon the said reservation but moved on the reservation since the year 1888, and then for the first time made claim to the lands above described.

These defendants further aver that the United States allotting agent, appointed by the Interior Department to investigate selections and make allotments of lands, investigated, ascertained
684 and found as a fact, that the complainant was not entitled to an allotment of any of the lands claimed by him, and reported his said findings to the Interior Department, and which said findings and report have been approved by the said department.

That the said United States allotting agent did find upon investigation, that the N. W. ¼ of the S. E. ¼ of section 34, had been selected for allotment by Joseph Hallowell, and that the N. E. ¼ of the S. E. ¼ of said section 34, township 25, range 7 E. had been selected for allotment by Stella Hallowell, and the said United States allotting agent did make to the said Hallowells respectively, allotment therefore, and thereafter made his official report to the Commissioner of Indian Affairs of said allotments respectively, and that the said —— Hallowell and Stella Hallowell were entitled to the lands allotted to them respectively, as above described, and which said allotments were subsequently approved by the Commissioner of Indian Affairs,

and by Secretary of Interior, and patents therefore have been issued to the said Joseph Hallowell and Stella Hallowell respectively, under date of April 11, 1900, and which said allotments were made and said patents issued in the regular and due course of business.

These defendants further aver that the complainant herein, did not have any prior or separate or vested right to the lands so patented to the said Joseph Hallowell and Stella Hallowell, respectively, and that the said allotments to them and the said patents to them were made in all respects in conformity to law.

10. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, is not true to the knowledge or belief of these defend-
685 ants, and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complaint demanded. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
United States Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 13 1901. Geo. H. Thummel, clerk.

686 Thereupon afterwards, to-wit:—on the 21st day of August, 1902, stipulation of facts was filed in said case, which said stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JACOB PETERS, Complainant, vs. THE UNITED STATES OF AMERICA, Charles P. Mathewson, Stella Hallowell, and Joseph Hallowell, Defendants.	Doc. T, No. 269. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the complainant, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Walter Mitchell will testify that Jacob Peter's claim to the N. ½ of the S. E. ¼ of section 34, township 25, range 7, was made about 1894, and that he, (Walter Mitchell) made the selection for Jacob Peters. Whatever improvements have been made on the land above de-

scribed he (Walter Mitchell) made for Jacob Peters. The first thing that was done was to cut hay. He (Walter Mitchell) entered the proofs of the selection at the agency and then leased the land out for pasturage. Two years ago he (Walter Mitchell) broke about ½ of the land. Jacob Peters was born in Richardson county, Nebraska, in 1871.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Aug. 21, 1902. Geo. H. Thummel, clerk.

687 Thereupon afterwards, to-wit:—on the 3rd day of Sept. 1902, stipulation of evidence was filed in said case, which said stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JACOB PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Stella Hallowell, and Joseph B. Hallowell, Defendants.

Docket T, No. 269.
Stipulation of Evidence.

It is hereby stipulated that the following persons will testify in behalf of the defendants, to the facts set down after their names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

William F. Springer will testify that he is a member of the Omaha tribe of Indians, and was the interpreter for Allotting Agent Rankin who made the allotments under the act of 1893.

That said Springer will further testify that at and before the time when the allotments were made to Stella Hallowell and Joseph B. Hallowell of the north half of the southeast quarter of section 34, township 25, range 7, that Henry Springer appeared before the said Rankin and this witness, and made claim that he had selected the land above described in his own right, but that afterwards he sold his right to said selection to Arthur Hallowell; the said Arthur Hallowell being the person who was looking after the selections and allotments to be made to the said Joseph B. Hallowell and Stella Hallowell. That during said allotting by the said Rankin there was no claim made to the said Rankin so far as the knowl-
688 edge of this witness goes, of any other person to the said lands above described.

The witness further states that there were no building improvements of any kind whatever on the said land at the said time, and to his knowledge there was no fence around this 80 acres of land.

JNO. L. WEBSTER,
Att'y for Def'ts.
THOMAS L. SLOAN,
CHARLES E. CLAPP,
Att'ys for Complainant.

Endorsed: Filed Sep. 3 1902 Geo. H. Thummel, clerk.

689 Thereupon afterwards, to-wit: on the 22nd day of September, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

JACOB PETERS
v.
UNITED STATES OF AMERICA ET AL. } No. 269, Doc. T.

The Replication of Jacob Peters, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant, saving and reserving to himself, all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendants, for replication thereunto saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHARLES E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

690 Thereupon afterwards, to-wit:—at the May 1902 term of said court and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal No. 1 of the proceedings of said court had on said day, to-wit:—

JACOB PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Stella Hallowell, and Joseph B. Hallowell, Defendants.
} Doc. T, No. 269. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is, therefore, ordered, adjudged and decreed that the injunction heretofore granted be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

691 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, assignment of errors was filed in said case, which said assignment of errors is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JACOB PETERS, Complainant,
vs.
THE UNITED STATES OF AMERICA, STELLA Hallowell, and Joseph B. Hallowell, Defendants.
} Docket T, No. 269. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

692 Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Jacob Peters was not entitled to claim and have allotted to him the land described in plaintiff's bill of complaint, to-wit: The north half of the south west quarter of section thirty-five (35), and the north half of the south east quarter of section thirty-four (34), all in township twenty-five (25) north, of range seven (7), east of the 6th P. M.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

JACOB PETERS,
Complainant,

693 By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13, 1903. Geo. H. Thummel, clerk.

694 Thereupon afterwards, to-wit: on the 13th day of October, 1903, petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JACOB PETERS, Complainant, vs. THE UNITED STATES OF AMERICA, STELLA Hallowell, and Joseph B. Hallowell, Defendants.	Docket T, No. 269. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceived himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

JACOB PETERS,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

695 And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

And thereupon, to-wit: on the said 13th day of October, 1903, bond on appeal was filed in said case, which said bond on appeal is in words and figures following, to-wit:

696 269, T.

Know all men by these presents, that we, Jacob Peters & W. K. Mitchell are held and firmly bound unto The United States of America, Stella Hallowell & Joseph B. Hallowell in the full and just sum of one hundred dollars to be paid to the said The United States of America, Stella Hallowell & Joseph B. Hallowell heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Jacob Peters plaintiff and The United States of America, Stella Hallowell & Joseph B. Hallowell defendant-judgment was rendered against the said Jacob Peters and the said Jacob Peters has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, Stella Hallowell & Joseph B. Hallowell citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Jacob Peters shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JACOB PETERS. [SEAL.]
W. K. MITCHELL. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of—
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

697 Thereupon afterwards, to-wit: on the said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

698 The United States of America to the United States of America, Stella Hallowell, and Joseph B. Hallowell, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Jacob Peters is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] # 2008. No. 269. United States circuit court, district of Nebraska. Jacob Peters *vs.* United States *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

698*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Stella Hallowell and Joseph B. Hallowell, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

698*b* UNITED STATES OF AMERICA, *District of Nebraska, County of Douglas,* } *ss:*

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leav-

ing with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

699 Thereupon afterwards, to-wit: on the 19th day of April, 1901, an amended bill of complaint was filed in said case, which said amended bill is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

SARAH F. McCREARY, Complainant, vs. THE UNITED STATES OF AMERICA, ETHELYN Chase, a Minor, and Charles P. Mathewson, Defendants.	No. 362, Doc. T. Amended Bill of Complaint.

To the honorable the judges of said court:

Sarah F. McCreary brings this her bill of complaint against the defendants, and says that she is a member of what is or until recently was known as the Omaha tribe of Indians in Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and the treaties herein set forth.

That she is of what is known as mixed blood, and is a lineal descendant from one Michael Barada or Michael Berda as he was sometimes designated, who intermarried with one Taegleha Hacienda, an Indian woman of the full blood and a member of said tribe. That your oratrix and her ancestors back to said Michael Barada and his said wife, have continually maintained their domicile with said tribe and have maintained tribal relations therewith so long and so far as any tribal relations have been maintained by said tribe, and have participated in the property and other rights of said tribe, and have been recognized by the said tribe and the members thereof as members of said tribe and are entitled to all its rights and privileges.

700 Further complaining your oratrix says that on the 16th day of March, A. D. 1854, a certain treaty was entered into by

and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands whereof it received its present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including the ancestors of your oratrix. All of which matters by said treaty provide- and other matters and things more fully appear in said treaty as published in United States Statutes at Large, vol. 10, p'ge 1043, to which for greater certainty your oratrix refers.

And your oratrix further shows that on the 6th day of March A. D. 1865 another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14, page 667, to which for greater certainty your oratrix begs to refer.

And further showing your oratrix says that on the 7th day of August, A. D. 1882, an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person under eighteen years of age one sixteenth of a section.

701 That all allotments should be *selected by the Indians*, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matter- more fully appear in said act as set forth in the Statutes at Large, vol. 22, page 341, to which for greater certainty your oratrix refers.

Your oratrix further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act in December 1884, and at subsequent times since.

And your oratrix further shows that her mother Artemesia Frost was recognized as a member of the Omaha tribe of Indians, and that she received an allotment on the Nemaha half breed tract, and that she has lived on the present reservation and does live upon said reservation at the present time. That her said mother since the treaty of 1865 has been recognized as a member of the Omaha tribe of Indians and has been enrolled upon the tribal roll and has drawn annuity money for herself and some of her children, and has had the benefits of tribal property, the mill and other common property of the tribe. That Artemesia Frost was the daughter of Margaret Sloan who was also recognized as a member of the tribe and received

the benefits of the tribal property under the treaty of 1854, and the later treaty of March 6th, 1865. That your oratrix as the head of a family has selected the following described land for allotment of which she is now in possession; the S. E. ¼ of section 11 twp. 26 N. range 6, east of the 6th P. M. in Nebraska; that such described property is a part of the land described and referred to in the treaties and acts of Congress herein above set out and has been sur-
702 veyed in accordance with the treaties and acts of Congress; that your oratrix has placed valuable improvements upon the above described premises, and that no person or persons claim or did claim the same when first selected by your oratrix in accordance with the laws relating thereto and the notice received from the council of the Omaha tribe of Indians, and that it is occupied by your oratrix and she is the only person who has occupied said land under a claim for allotment. That your oratrix is a member of said tribe by blood and descent and according*ly* to the customs of said tribe. That application for the allotment of said land has been refused your oratrix by the Department of the Interior.

Your oratrix further says that on the 3rd day of March, A. D. 1893, an act of Congress was passed amending or extending the act of August 7th, 1882, providing that with the consent of the Omaha trive of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893, but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council May 1899, and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land in controversy without investigation as to the priority of the claim and without notice to the claimants.

703 To Ethelyn Chase, a minor child of Hiram Chase has been assigned the N. ½ of the S. E. ¼ of section 11, township 25 north, range 6 east in Nebraska. That said assignment was made under the provisions of the act of 1893 as approved by the Indians in 1899. That a trust patent therefore of date April 11th, 1899, naming the United States as trustee has been issued in the name of Ethelyn Chase. No rights were acquired under said patent but owing to the fact the assignment of said land was made during the pendency of this suit makes Ethelyn Chase a necessary party defendant.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian

Affairs to make leases for the Indians who hold allotments of land and to place in possession the allottee or lesses, and that he threatens to place into possession either the allottee hereinbefore named or her lessee to the great and irreparable damage of the complainant who is now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land in controversy and his threats that he will remove your oratrix from the land make him a necessary party to this suit.

And your oratrix further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdic-
704 tion to take cognizance of any action suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305, which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your oratrix begs to refer.

Your oratrix further states that the defendant The United States of America claims that by virtue of the 4th art. of the treaty of March 6th, 1865, that the assignment to be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood "including their half breed and mixed blood relatives now residing with them." The said defendant claims that your oratrix and her ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your oratrix admits that she and her ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation and the rights of allotment under the treaty of March 6th, 1865, or the rights to the allotment under the act of Congress of August 7th, 1882.
705 That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of

allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians, and the United States Indian agents on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871, contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing *on the reservation at the* time of making the schedule referred to; that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent, the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation but who at all times and at the time of the treaty of March 6th, 1865, and ever since has resided away from the reservation.

Your oratrix further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

706 Your oratrix further states that the defendant, The United States, claims that the complainant or her ancestors have received allotments of land under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotment under the policy of the Indian office your oratrix is not entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your oratrix admits that her ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians; that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by her ancestor nor given to her ancestor in consideration of the relinquishment of any other right- than those to which she was entitled on the Nemaha reservation.

Numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th, 1830, sums of money, which were accepted on consideration of a relinquishment to the United States of all of their interests in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who have received allotments on the Nemaha reservation and those who received the money in lieu of said allotments of land

under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th, 1882; that your oratrix has not in any manner assigned or relinquished her right or claim to the benefit under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Gov-
707 ernment nor by the enactment of any law authorized this complainant or her ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of this tribe has been accepted or approved by the United States or any of its officers.

Wherefore your oratrix shows to your honors that she is without a remedy at law and remediless in the premises unless relieved by your honors in this court of equity, and she therefore prays the aid of the court in the premises and that said defendants, The United States of America, Ethelyn Chase, minor, by her next friend Hiram Chase, and Charles P. Mathewson may answer your oratrix' bill but without oath, answer under oath being expressly waived. That it be ordered and decreed that the patent issued to Ethelyn Chase is null and void and that the selection as made by Sarah McCreary, your oratrix, is prior and superior to the claim of Ethelyn Chase and is the allotment of your oratrix and that your oratrix *and that your oratrix* and her heirs are entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your oratrix further prays for a preliminary order of injunction against the defendants Charles P. Mathewson and Ethelyn Chase enjoining and restraining each of them, their agents and employés from in any manner interfering with the possession of the land herein described — at the termination of this suit that said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your oratrix the most gracious writ of subpœna to be issued under the seal of this court direction to the United States of America, Ethelyn Chase minor, by her next friend Hiram Chase, and Charles P.
708 Mathewson, therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed Apr. 19 1901 Geo. H. Thummel, clerk.

709 Thereupon afterwards, to-wit: on the 13th day of July, 1901, an answer was filed in said case, which said answer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

SARAH F. McCREARY, Complainant,
vs.
THE UNITED STATES OF AMERICA, Ethelyn Chase, a Minor, and Charles P. Mathewson, Defendants.

Doc. T, No. 362. Answer to Amended Bill of Complaint.

The answer of The United States of America, Ethelyn Chase, a minor, and Charles P. Mathewson, defendants, to the amended bill of complaint of Sarah F. McCreary, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer, say:

1. These defendants deny that the complainant is an Omaha Indian and deny that the complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary these defendants aver that the said complainant is a white woman, and a citizen of the United States, and that her ancestors were white persons and citizens of the United States, and that her said ancestors
710 were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that the complainant or her ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the tribe or by the United States, as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainant claims to trace her lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe and therefore leaves the complainant to her proof in that regard.

That there was born to the said Michael Barada and his wife, in the year 1811, a daughter by the name of Margaret Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Ma-garet Barada lived in the city of St. Louis with her parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Margaret Barada intermarried with one Thomas Sloan, a free born white man of Irish nationality and a
711 citizen of the United States, and that said Thomas Sloan and his wife Margaret Sloan continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years, until some time after the approval act of Congress of August 7, 1883, (22 U. S. Stats. at Large, 341) hereinafter more particularly referred to.

That to the said Thomas Sloan and his wife Margaret there was born a daughter named Artemesia (the mother of this complainant) and the said Artemesia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and was never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Artemesia Sloan, so being a white woman and a citizen of the United States, married a white man named Leonard Frost, a free born white man and a citizen of the United States.. There was born to the said Leonard Frost and his wife Artemesia, a daughter Sarah Frost, who intermarried with —— McCreary; and is the complainant herein, and the said Sarah McCreary, being such white person and citizen of the United States, took the status of her father and continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, who came to the Omaha reservation about 1900 with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Con-
712 gress—1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Sarah McCreary, being only one sixteenth Indian blood, and she not then living with the Omaha tribe of Indians;

that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871,
713 and which said schedule did not contain the names of the complainant or her ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Ma-garet Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters, and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontanelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Asnley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain

any of the following names, Thomas L. Sloan, Ma-garet Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Ba-
714 rada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedants or descendants of said parties, so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant. That the said Thomas Sloan was the grandfather of this complainant, and the said Artemesia Sloan was the mother of this complainant, and the Peters family and descendants of Michael Barada and uncles and aunts of complainant.

4. These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large p. 341) the said Sloan family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Sloan family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Sloan family to be investigated, and being of the opinion as the result of said investigation that the Sloan family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Sloan family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which said judgment and finding still remains in full force and effect.

715 5. The Indians of the reservation manifested the most determined opposition to the Sloan and Peters families, being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allot-ing the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by the department in deciding the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under
date December 30, 1870, approved by the superintendent of
716 Indian affairs, and having been submitted to the department
by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of
Congress to do anything contrary to the wishes of the In-
717 dians. Your decision in the case is approved, and Mrs. Kuhn
and family should be notified to remove from the reserva-
tion."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to
718 lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation, and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were borne upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

719 6. These defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit: William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We knew that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 21, range 8, and broke 40 acres.

720 We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has be n done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal

land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

721 Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons inciuding the said Sloan family from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the

722 treaty of March 6, 1865 (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all

Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882, (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relation- residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th. 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

723 Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. These defendants further aver that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and — failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the

Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which
724 recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter Peters, Luke Sailors and Frank Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as he was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry
725 Fontanelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. *This* defendant- further avers that afterward the said Sloan family endeavored to have themselves adopted into the Omaha tribe of Indians, and to have themselves recognized by the Interior Department as members of the Omaha tribe of Indians, and to that end submitted to the department certain petitions purporting to be signed by certain members of the Omaha tribe of Indians; that under date of September 6, 1894, the department ruled that the said

Margaret Sloan and Thomas L. Sloan, should not be admitted to membership in the Omaha tribe of Indians, and accordingly so ordered, and in which order and opinion the department held as follows:

"Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure
726 separate and distinct from their alleged rights as Omaha Indians by blood, and that such alleged right is not necessarily a test for such adoption, there remains the right to admission by the free will and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seem to be in proper form, and to express the desire of a majority of the members of the tribe that the persons in question shall be placed upon the rolls of the tribe, and be admitted to all the rights and privileges of other members thereof.

Besides the opposing petition hereinbefore referred to, the department is in receipt of recent information which shows that of the one hundred and fifty seven persons whose names appear on the six petitions presented with your letter, only seventy now favor the claimants; that eleven others have since assented to their adoption, making eighty-one in all now favorable; that twenty-four of the signatures thereon were not written by the parties whose names are given, nor was the use of their names authorized by them, that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women—neither of whom have any voice in such matters; that one of the nine members of the council purporting to have signed one of the petitions, did not sign nor authorize the use of his name, and further, that there are about one hundred and eighteen male members of the tribe, of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petitions in question, the facts presented seem to clearly establish the be-
727 lief that it is the desire and wish of a majority of the members of the tribe that the Sloans be not admitted to membership and it is so ordered.

In reference to that part of your report wherein you state that Thomas L. Sloan has held and improved a tract of land since 1881 or 1882, on the Omaha reservation, it would seem that he is doing so in defiance of any legal authority of occupation."

That after the above order and ruling of the department, the counsel for Ma-garet Sloan and Thomas L. Sloan applied to the department for reconsideration of the adoption case, and the department under date of November 17, 1896, re-affirmed this ruling and among other things therein said:

"It is not denied, nor has it ever been, that the Sloans, mother and son, are of part Omaha Indian blood. The tribe recognized them as such and made provisions for them, with others, by the treaty of 1830, and in the opinion of the department, and the Omahas themselves, their claim- as such mixed bloods were extin-

guished by the lands given them under the terms of the tenth article of the treaty named. * * * The claims of Margaret and her son William E. were extinguished prior to the birth of Thomas L. It is nowhere alleged or claimed that the latter is the offspring of a mother of Indian blood, much more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claims of Margaret and Thomas L. are based upon their birthright as Omaha Indians and upon their alleged adoption in recent years by the tribe.

728 The birthright claim of Margaret has been extinguished. Thomas L. never has such claim. Neither of them have any claim by adoption, never having been regularly, fairly or properly adopted by the tribe, as was shown by department letter of September 6, 1894.

Notwithstanding that Mr. Breckinridge has advised the department by letter dated the 30th ultimo, of his withdrawal as attorney for the claimants, I have caused this review of the case to be made, and adhere to the opinion expressed in department letter of September 6, 1894, that the persons named have no valid, legal claim to membership with the Omaha tribe of Indians."

And defendant- avers that the above ruling of the Department of the Interior established the fact that Ma-garet Sloan and her descendants, the plaintiff- herein, then were not and had not theretofore been members of the Omaha tribe of Indians, and the defendant- avers that the said Margaret Sloan and her descendants, the plaintiff- herein, are not and never have been members of the Omaha tribe of Indians.

10. These defendants for further answer avers that under article 10, of the treaty of July 15, 1830, (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to Margaret Sloan for three hundred and twenty acre- of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Margaret Sloan and her descendants including complainant were exhausted and extinguished as claimants to mem-

729 bership in the Omaha tribe of Indians, and to any further or other allotment of land.

11. These defendants for further answer deny that the complainant is the head of a family, and deny that the complainant is entitled to 160 acres of land as the head of a family, and avers that the complainant at date of the approval of the act of Congress of August 7, 1882, being the act under which complainant claims the right of an allotment of land, was then a single person — years of age; that the complainant was such single person at the date of the amendatory act of 1893, and as such single person would not be entitled to have in any event, more than 80 acres of land.

These defendants further aver that the complainant never occupied or improved the S. E. ¼ of section 11, in township 25, N. range

6; that the complainant was born in Richardson county, in the State of Nebraska, and has at all times since lived in Richardson county, State of Nebraska, and is now living with her husband in Richardson county, State of Nebraska; and that she has never lived upon the Omaha Indian reservation and was not on the reservation at the time of the allotting of lands to the Omaha Indians, and was not on the Omaha reservation at the date of the commencement of this suit; that she did not make a selection of the lands claimed, and if any selection ever was made of said lands in her name or her behalf, the same was so made by her attorney, Thomas L. Sloan.

These defendants further aver that Sarah F. McCreary, Philomen Frost, Charles A. Frost, Leonard Frost, Mary Frost and Frank Frost are all children of Artemesia Frost and Leonard Frost (hus-
730 band and wife), and that the United States allotting agent consulted with Leonard Frost and Artemesia Frost, the parents, and found it desireable that if lands were to be allotted to the Frost family, they should be adjoining lands, and such was the wish of Leonard Frost and wife, whereupon the United States allotting agent made reservation of lands for the Frost family, including the complainant pending the result of this litigation in section 8 and 9, township 25, range 7, and which reservation has been made upon the surveyed maps in the office of the Commissioner of Indian Affairs awaiting the final determination of this suit.

These defendants further aver that the United States allotting agent, appointed by the Interior Department to investigate selections and make allotments of land, investigated, ascertained and found as a fact, that the complainant was not entitled to an allotment of any of the lands claimed by her and reported his said findings to the Interior Department, and which said findings and report have been approved by the said department.

That the said United States allotting agent did find upon investigation that Hiram Chase had made claim for and in behalf of his children of the S. E. ¼ of section 11, township 25, range 6, being the same land now claimed by the complainant; and that the said Chase had leased the said land and had been deriving the rents and profits therefrom since the year 1893, and the said allotting agent did make allotment of the N. ½ of the S. E. ¼ of section 11, to Ethelyn Chase, a child of Hiram Chase, and thereafter made his official report to the Commissioner of Indian Affairs; and that said
731 Ethelyn Chase was entitled to lands allotted to her as above described, and which said allotment was subsequently approved by the Commissioner of Indian Affairs and by the Secretary of the Interior, and the patent therefore was issued to the said Ethelyn Chase under date of April 11, 1900, and which said allotment was made and the said patent issued in the regular and due course of business.

These defendants further aver that the complainant herein did not have any prior or superior or vested right to the land so patented to the said Ethelyn Chase, and that the allotment to her, and

the said patent to her were made in all respects in conformity to law.

12. And these defendants say that if there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complainant demanded. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
United States Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 13 1901. Geo. H. Thummel, clerk.

732 Thereupon afterwards, to-wit:—on the 22nd day of September 1902, a replication was filed in said case, which said replication is in the words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

SARAH F. MCCREARY
v.
UNITED STATES OF AMERICA. } No. 362, Doc. T.

The Replication of Sarah F. McCreary, Plaintiff, to the Answer of United States of America, Defendant.

This replicant, saving and reserving to herself, all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer, of the defendant, for replication thereunto, saith that she doth and will aver, maintain and prove her said bill to be true, certain and sufficient in the law to be answered unto by the said defendant and that the answer of the said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this

honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

THOMAS L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

733 Thereupon afterwards, to-wit: at the May term 1902 of said court and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal "1" of said court, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

SARAH F. McCREARY, Complainant,
vs.
THE UNITED STATES OF AMERICA, ETHELYN Chase, a Minor, and Charles P. Mathewson, Defendants.
Doc. T, No. 362. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

734 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, assignments of error were filed in said case, which said assignment of errors is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

SARAH F. McCREARY, Complainant,
vs.
THE UNITED STATES OF AMERICA, Ethelyn Chase, and Charles P. Mathewson, Defendants.
Docket "T," No. 362. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

735 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Sarah F. McCreary was not entitled to claim and have allotted to her the land described in plaintiff's bill of complaint, to-wit:

The southeast quarter of section eleven (11) in township twenty-five (25) north of range six (6) east.

736 Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

SARAH F. McCREARY,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

737 Thereupon, to-wit: on the 13th day of October 1903, petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

SARAH F. McCREARY, Complainant,
vs.
THE UNITED STATES OF AMERICA, ETHELYN Chase, and Charles P. Mathewson, Defendants.
} Docket "T," No. 362. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives herself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States,
738 and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

SARAH F. McCREARY,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

And now, on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

Thereupon, to-wit: on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following to-wit:

739 362, T.

Know all men by these presents, that we, Sarah F. McCreary, Cora J. Frost, Charles A. Frost are held and firmly bound unto The United States of America and Ethelyn Chase in the full and just sum of one hundred dollars ($100) to be paid to the said The United States of America and Ethelyn Chase heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Sarah F. McCreary plaintiff and The United States of America and Ethelyn Chase defendant- judgment was rendered against the said Sarah F. McCreary and the said Sarah F. McCreary has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America — Ethelyn Chase citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Sarah F. McCreary shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

SARAH F. McCREARY. [SEAL.]
CORA J. FROST. [SEAL.]
CHARLES A. FROST. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

740 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

741 The United States of America to The United States of America, Ethelyn Chase, and Charles P. Mathewson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Sarah F. McCreary is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2007.—No. 362. United States circuit court, district of Nebraska. Sarah F. McCreary *vs.* United States *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

741*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Ethelyn Chase, and Charles P. Mathewson, by handing to and leaving a true and correct copy thereof with John L. Webster their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

741*b* UNITED STATES OF AMERICA, *District of Nebraska, County of Douglas,* } *ss:*

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and

leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908.}

SUSAN M. BONNEVIER,
Notary Public.

742 Thereupon afterwards, to-wit:—on the 19th day of April, 1901, an amended bill of complaint was filed in said case, which said amended bill is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JENNIE M. ARNOLD, Complainant, vs. THE UNITED STATES OF AMERICA, Nellie Fields, Nettie Fields, Minors; Bennie Saunsoci, a Minor; Richard White, Florence Filson, a Minor, and Charles P. Mathewson, Defendants.	No. 363, T. Amended Bill of Complaint.

To the honorable the judges of the United States circuit court for the district of Nebraska:

Your oratrix brings this her bill of complaint and says that she is of what is known as a mixed blood of the Omaha tribe of Indians and is a lineal descendant of Lata-da-we, who was an Indian woman of the full blood and a member of the Omaha tribe of Indians. That Lata-da-we intermarried with one Francis Bono and that they maintained tribal relations with the Omaha tribe and maintained their domicile upon the Omaha reservation and maintained tribal relations there so long and so far as any tribal relation- have been maintained by said tribe, and Lata-da-we has participated in the property and other rights of said tribe, and has been recognized by the said tribe and the members thereof as a member of said tribe and entitled to all its rights and privileges.

Further complaining your oratrix says that on the 16th day of March A. D. 1854, a certain treaty was entered into by and
743 between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof it received its present res-

ervation and certain sums of money paid *pro rata* to the individual members of the tribe including Lata-da-we and her children. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large, vol. 10, page 1043, to which for greater certainty your oratrix refers.

And your oratrix further shows that on the 6th day of March A. D. 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14, page 667, to which for greater certainty your oratrix begs to refer.

And further showing your oratrix says that on the 7th day of August A. D. 1882, an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation, either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person under eighteen years of age one sixteenth of a section. That all allotments
744 should be *selected by the Indians*, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22, page 431, to which for greater certainty your oratrix refers.

Your oratrix further shows that the said tribe gave their consent to the operation of said act of Congress and that allotments were made under the provision of said act in December, 1884, and at subsequent times since.

Your oratrix further says that on the 3rd day of March, 1893, an act of Congress was passed amending or extending the act of August 7th, 1882, providing that with the consent of the Omaha tribe of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893, but increased allotments were provided from the residue lands after fulfilling the provisions of the act of 1882.

That consent of the Omaha tribe was given in open council May 1899, and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to

the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimants.

And your oratrix further shows that her mother Mary Monette was the child of Francis Bono and Lata-da-we, who was as
745 herein above set forth an Omaha Indian woman and a member of said tribe. That she lived among the Omaha Indians a number of years prior to her death and was recognized by them as one of their own blood. That she removed to the present reservation upon receipt of a letter from the special allotting agent in which she was notified that the tribal council had requested that she, Mary Monette and her family be allotted land with other members of the tribe, which notice was sent to her through a special messenger but was not received until after the work of allotting the lands had been completed. That as soon as the notice was received Mary Monette and her family removed to the Omaha reservation and selected land. That your oratrix Jennie M. Arnold selected for herself as the head of a family 160 acres of land described as follows:

The S. E. ¼ of section 13, township 25 N. range 6 east, and for her son, Benjamin Arnold, the E. ½ of the S. W. ¼ of section 13, township 25 N. range 6, and for her minor son Don Arnold the N. ½ of S. E. ¼ of section 24, T. 25 R. 6 east of the 6th P. M. in Nebraska. Your oratrix has been refused an allotment by the Interior Department.

That the said described land is a part of the lands referred to in the treaties and act of Congress herein above referred to. That no person or persons claimed the land when first selected and marked for your oratrix in accordance with the laws relating thereto. That your oratrix is in possession of said lands and has made valuable improvements thereon. That your oratrix is a member of said Omaha tribe of Indians by blood and descent and also in accordance with the customs, rules and regulations of said tribe, and said relationship and membership has never been terminated.

That under provisions of the act of Congress of March 3rd, 1893, new and additional allotments of land have been made to
746 members of the Omaha tribe and during the pendency of this suit assignments of the land have been made to the following named persons:

To Nellie Fields, N. ½ of the S. E. ¼ of section 13, to Nettie Fields the S ½ of the S. E. ¼ of section 13. That both of the above named persons are minors and are represented by their father Josiah Fields, That the E. ½ of S. W. ¼ of section 13 has been assigned to Bennie Saunsoci, who is also a minor and whose next friend and father is Ardent Saunsoci. That the N. W. ¼ of the S. E. ¼ of section 24 has been assigned to Wahaga White, who has since died. That at the time of his death he was a minor, unmarried and wi hout issue, that the sole heir at law of said deceased child is Richard White. That the N. E. ¼ of the S. E. ¼ of section 24 has been assigned to Florence Filson, who is a minor and a non resident of the State. She is at present residing with her mother Josephine

Lamson at St. Lake City, Utah. The said Florence Filson is one sixteenth Omaha Indian blood and fifteen sixteenths white, and whose ancestor, John Pilcher received an allotment on the Nemeha half breed tract and who also took a homestead as a citizen of the United States and who was not a resident on the Omaha reservation from 1864 to 1878 but who received an allotment under the act of 1882, That no rights were acquired by these parties to said lands assigned to them but owing to such assignments and alleged claims thereunder they are necessary parties to this suit.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land to place in possession the allottee or lessee, and that he threatens to
747 place in possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainant who is now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land in controversy an- his threats that he will remove your oratrix from the land make him a necessary party to this suit.

And your oratrix further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claims to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty. That said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large, on page 305, which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your oratrix begs to refer.

Your oratrix further states that the defendant The United States of America claims that by virtue of the 4th art. of the treaty
748 of March 6th, 1865, the assignment to be in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood, "including their half breed and mixed blood relatives now residing with them," the defendant The United States, claims that your oratrix and her ancestors were not residing on

the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your oratrix admits that she and her ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation and the rights of allotment under the treaty of March 6th, 1865, nor their rights to allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 1st, 1870, and approved by the Secretary of theInterior January 26th, 1871, contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to; that under the provisions of the act of August 7th 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865,
749 nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agents, the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation, but who at all times and at the time of the treaty of March 6th, 1865, and ever since resided away from the reservation.

Your oratrix further states that no new rights were acquired under the treaty of March 6th 1865, but that the assignment provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your oratrix further states that the defendant, The United States, claims that the complainant or her ancestors have received allotment of land under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotments under the policy of the Indian Office your oratrix is not entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your oratrix admits that her ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians, that the quantity so assigned was one half the amount provided by said treaty, and that the said allotment was not accepted by her ancestor nor given to her ancestor in consideration of

the relinquishment of any other right than those to which she was entitled on the Nemaha reservation.

Numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th
750 art. of the treaty of July 30th, 1830, sums of money which were accepted in consideration of a relinquishment to the United States of all their interest in and to the deficiency in the half breed reservation under the provision of the act of Congress, section 6th, ch. 66, of the third session of the 35*rd* Congress, 1859. That most of the — breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th, 1882; that your oratrix has not in any manner assigned or relinquished her right or claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians, neither has the United States by the executive department of the Government nor by the enactment of any law authorized your oratrix or her ancestors, or any member of the Omaha tribe of Indians to sever the- tribal relations. That no relinquishment of such tribal rights by this complainant or any member of this tribe has been accepted or approved of by the United States or by any of its officers.

Wherefore your oratrix shows to your honors that she is without a remedy at law and remediless in the premises unless relieved by your honors in this court of equity, and she therefore prays the aid of the court in the premises and that said defendants, The United States of America, Nellie Fields, Nettie Fields, by their next friend, Josiah Fields; Bennie Saunsoci, by his next friend, Ardent Saunsoci, Richard White, Florence Filson by her next friend Josephine Lamson, and Charles P. Mathewson may answer your oratrix' bill but without oath, answer under oath being expressly waived.

751 That the patents issued to Nellie Fields, Nettie Fields, Bennie Saunsoci, Wagaha White and Florence Filson be ordered and decreed null and void, and that the selection as made by Jennie M. Arnold for herself & minor children Ben & Don Arnold be decreed their allotments prior and superior to their pretended claims, and that your oratrix and her heirs be decreed entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th 1882.

Your oratrix further prays for a preliminary order of injunction against the defendants Nellie Fields, Nettie Fields, Bennie Saunsoci, Richard White and Florence Filson and Charles P. Mathewson, enjoining and restraining each of them their agents and employés from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and for such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your oratrix the most gracious writ of subpœna to be issued under the seal of this court directed to the United States of America, Nellie Fields, Nettie Fields, by their next friend, Joseph Fields; Bennie Saunsoci by his next friend, Ardent Saunsoci, Florence Filson by her next friend Josephine Lamson, Richard White, and Charles P. Mathewson, therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed Apr- 19 1901 Geo. H. Thummel, clerk.

752 Thereupon afterwards, to-wit: on the 31st day of July, 1901, an answer was filed in said case, which said answer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JENNIE M. ARNOLD, Complainant, *vs.* THE UNITED STATES OF AMERICA, Nellie Fields, Nettie Fields, Minors; Bennie Saunsoci, a Minor; Richard White, Florence Filson, a Minor, and Charles P. Mathewson, Defendants.	Doc. T, No. 363. Answer to Amended Bill of Complaint.

The answer of The United States of America, Nellie Fields, Nettie Fields, minors; Bennie Saunsoci, a minor; Richard White, Florence Filson, a minor, and Charles P. Mathewson, defendants, to the amended bill of complaint of Jennie M. Arnold, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer, say:

1. These defendants deny that Mary Monette, the mother of the complainant, is or ever was a member of the Omaha tribe of Indians

of Nebraska; and deny that the complainant or her ancestors
753 ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska; and deny that they ever participated in the benefits and other rights of the said tribe; and deny that they were recognized by the United States as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainant claim- to be a descendant of Mary Monette, and that the said Mary Monette was the daughter of Latadawe, who had intermarried with one Francis Bono, and the defendant avers that the said Francis Bono was a free born white man and a citizen of the United States, and that the said Mary Monette (*née* Bono) took the status of her father, and thereby became and was a white person and citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; and that the said Mary Monette lived with her parents in Richardson county, State of Nebraska, and in that vicinity, but not on the Omaha reservation up until the year —, when she intermarried with one —— Monette, who was a free born white man and citizen of the United States.

That there *was* born of the said —— Monette and his wife Mary Monette the following children; Mitchell Monette, David Monette, Jennie M. Arnold *née* Monette, Cassie M. Karch *née* Monette and which children, in law and in accordance with the rulings of the Interior Department in its government and control of Indian affairs, took the status of their father, and thereby became and were white persons and citizens of the United States, and were not and never became members of the Omaha tribe of Indians; and that the said parents together with their said children, continued to live in Richardson county, State of Nebraska, and in that vicinity until after the approval of the act of Congress, August 7, 1882; and that the
754 said Mary Monette came to the Omaha reservation about the year 1892, with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that the complainant and her ancestors, did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded the Monette family, being only mixed Indian blood, and not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said

treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said Monette family was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the
755 Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the Monette family or their ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the Monette family, the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Stats. at Large, p. 341) the said Monette family and other half-breeds and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and these defendants deny that the tribal council of the Omaha Indians ever requested that lands be allotted to the Monette family; and deny that the Monett- family were requested by letter or otherwise, from the United States allotting agent to come to the reservation, but to the contrary aver that the first allotment of lands under the act of 1882, was completed in the year 1884; and that the Monette family did not come to the vicinity of the Omaha reservation until the year 1892.

That the Omaha Indians on the said reservation manifested
756 the most determined opposition to the Monette family and other mixed blood Indians of that class being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision, as to the right of the parties to receive allotment.

4. As showing the position taken by the Interior Department in deciding the cases of the absentee mixed bloods, the following is taken from the ruling of the department dated September 13, 1883, relating to Celestine B. Kuhn, a member of the Barada family the

members of which family are similarly situated to the complainant herein, and have like suits pending, claiming the right to allotments of lands.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotment.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

757 Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestine Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having — in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation shows that they would never have consented to any such disposition of their lands and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians.

Your decision in the case is approved, and Mrs. Kuhn and
758 family should be notified to remove from the reservation."

H. PRICE,
Commissioner.

The department also made like ruling in the case of Euphrasia Peters, another of the mixed blood claimants of like class.

The last mentioned case was reported to the department by A. C. Fletcher, special U. S. Indian agent, under date of July 28, 1883, as a test case. The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4 of the treaty of 1765, defines those entitled to lands to be 'members of the tribe including their half breed or mixed blood relations now residing with them.'

759 This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field obseevation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation, and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born- upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants for further answer aver that notwithstanding the ruling of the Department of the Interior above set forth,
760 many half-breed and mixed blood Indians insisted in coming and remaining on the lands of the reservation, and as a result thereof, the members of the Omaha tribe of Indians caused a petition to be prepared and transmitted to the Interior Department under date of March 19, 1888, in which they protested against the absentee half and mixed blood Indians coming upon the reservation and claiming the right to an allotment of lands, and requested the Interior Department to take action to remove all intruders from the lands of the reservation.

That the Commissioner of Indian Affairs acting on the said petition and protest, did under date of November 14, 1888, make his report to the Secretary of the Interior and requested authority to remove said mixed blood claimants from the said reservation, and that afterward on the 5th day of December, 1888, the Secretary of the Interior directed the removal of the said mixed blood claimants from the said reservation, and which said order and judgment is as follows.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though
761 a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865 (14 Statutes 668) was made. (The — article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not born- upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That

upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who
762 may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

6. These defendants for further answer aver that under article 10, of the treaty of July 15, 1830, (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to complainant's ancestor for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of the ancestor and his descendants including complainant were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

7. These defendants further aver that the preference right to select lands for allotment under the act of Congress, August 7, 1882, (22 U. S. Statutes at Large, 342) is confined by section (5) of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the treaty with the Omahas concluding March 6, 1865, and Monette family had not received and were not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof,

the said Monette family did not have and could not acquire
763 any such interest in the lands described in the amended petition as would give them a preference over other Indians in the selection of land for allotment.

8. And these defendants for further answer say that the complainant was not and is not the head of a family, and is not entitled to claim by way of allotment, the 160 acres of land described in the amended bill of complaint, but her right to allotment, if any she had, would be limited under the law to 80 acres of land.

9. These defendants for further answer aver that the complainant did not select for allotment, and did not occupy or make any improvements on any of the lands described in the amended bill of complaint; and the defendants further aver that the complainants never lived upon the Omaha Indian reservation, and never selected, improved, or cultivated any land whatsoever, upon the Omaha Indian reservation, and is not entitled to have or select any lands upon the Omaha Indian reservation for allotment.

10. That the said United States allotting agent did find upon investigation that the said complainant did not and never had selected, occupied, or improved any of the lands described in the amended bill, but did find upon investigation that Josiah Fields had selected in the year 1891 for allotment to his daughters Nellie Fields and Nettie Fields, the S. E. ¼ of section 13, township 25, range 6 E., and had ever since the said year of 1891, continued to claim said land for his said daughters and had occupied the same, and cultivated the same from the said year 1891 down to the date of allotment, and the said United States allotting agent did make an allotment of the S. ½ of the S. E. ¼ of said section 13, to *Nettie* Fields, and the N. ½ of the N. E. ¼ of said section 13, to Nettie Fields.

764 And the said allotting agent did further find upon investigation as a fact that the E. ½ of the S. W. ¼ of section 13, had been claimed for Bennie Saunsoci by his father Ardent Saunsoci since the year 1893, and that the said Saunsoci had continued to occupy and cultivate said lands since the year 1893, and the U. S. allotting agent did allot the — E. ¼ of the S. E. ¼ of section 24, to Florence Filson, and the N. W. ¼ of the S. E. ¼ of section 24, to Wa-ha-ga White, who gave to said allotting agent satisfactory proofs of their right to said allotment, and thereafter made his official report to the Commissioner of Indian Affairs of said allotments respectively, and that the said allottees were entitled to the lands allotted to them respectively, as above described, and which said allotments were subsequently approved by the Commissioner of Indian Affairs and by the Secretary of the Interior, and patents therefor have been issued to the said allottees respectively, under date of April 11, 1900, and which said allotments were made and said patents issued in the regular and *do* course of business.

These defendants further aver that the complainant herein, did not have any prior or separate or vested right to the lands so patented to the said allottees respectively, and that the said allotments to them

and the said patents to them were made in all respects in conformity to law.

11. And these defendants further aver that the United States allotting agent reserved for the Monette family pending this litigation and subject to the result thereof, the following land to-wit, the northeast quarter of section 13, township 25, north of range 6 east; the east half of the northeast quarter of section 14, township 25, north of range 6 east; the south half of the southwest quarter of
765 section 12, township 25, north of range 6 east; the southeast quarter of section 10; the northeast quarter of section 15, the north half of the south-east quarter of section 14, the northwest quarter of the southwest quarter of section 11, the east half of the southwest quarter of section 10, the northwest quarter of the southwest quarter of section 10, and the southwest quarter of the northwest quarter of section 10, and the southeast quarter of the northeast quarter of section 10, and the southeast quarter of the northeast quarter of section 9, all in township 25, north of range 7 east, and which said reservation has been noted upon the maps in the office of the Commissioner of Indian Affairs.

12. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of those defendants, and these defendants deny that the said complainants *are* entitled to the relief or any part thereof in the said complaint demanded.

And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMER-,
U. S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 31 1901 Geo. H. Thummel, clerk.

766 Thereupon afterwards, to-wit: on the 21st day of August, 1902, a stipulation of evidence was filed in said case, which said stipulation is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JENNIE M. ARNOLD, Complainant,
vs.
THE UNITED STATES OF AMERICA, NELLIE Fields, Nettie Fields, Minors; Bennie Saunsoci, a Minor; Richard White, Florence Filson, a Minor, and Chas. P. Mathewson, Defendants.

Doc. T, No. 363.
Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the complainants, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Mitchell Monette will testify that Jennie M. Arnold came to the Omaha Indian reservation in 1891. She moved to Pender in the winter of 1892. That winter her children went to the school at the Omaha Indian agency. Her children were at the Indian school at Genoa for two years, and one year at the Omaha Indian school at the agency.

That Jennie M. Arnold moved from Pender to Omaha in 1895. (Jennie M. Arnold claims the S. E. ¼ of section 13, allotted to Nellie Fields and Nettie Fields, and also claims the N. ½ of the S. E. ¼ of section 24, all in township 25, range 6, allotted to Wa-ha-gae White and Florence Filson, and also claims the E. ½ of the S. W. ¼ of section 13, township 25, range 6, allotted to Bennie Saunsoci.)

767 Thomas L. Sloan will testify that in the summer of 1891 he and Hiram Chase were co-partners in the practice of the law, and that his firm gave to Jennie M. Arnold the plats of the subdivision of the land which she selected for allotment, for herself and her minor children. That she made the selection by going over the land and having it marked by a furrow plowed around it.

That Charles Graves did the plowing, and that Michell Monette was with Graves at the time when the plowing was done.

Thomas L. Sloan further testifies that a part of the N. ½ of the S. ½ of said section 13, was broke up in the year 1893, and that he, Thomas L. Sloan, had used and farmed the land broke up since the year 1896 for Jennie M. Arnold, but that he, Thomas L. Sloan, has kept all the proceeds arising from the farming of the land except what he may have spent in this litigation, and breaking up for farming and holding possession of same.

In the Circuit Court of the United States for the District of Nebraska.

JENNIE M. ARNOLD, Complainant,
vs.
THE UNITED STATES OF AMERICA, NELLIE Fields, Nettie Fields, Minors; Bennie Saunsoci, a Minor; Richard White, Florence Filson, a Minor, and Chas. P. Mathewson, Defendants.

Doc. T, No. 363.
Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the facts set down after the-
names respectively, and it is hereby further stipulated and
768 agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

George H. Lamson will testify that he is the step-father of Florence Filson to whom has been allotted the E. ½ of the S. E. ¼ of section 24, township 25, range 6, (being part of the land claimed by Jennie M. Arnold in her amended bill of complaint).

And said Lamson will further testify that he selected said land for his step-daughter Florence Filson in the year 1891; that he broke the S. 40 acres of said land in 1891, and has used the same since 1892, by leasing the said S. 40 acres of said land to different parties since said date.

He will further testify that the N. 40 acres *is* now broken, but that he does not know who did it.

Josiah Fields will testify that he is the father of Nellie and Nettie Fields to whom has been allotted the S. E. ¼ of section 13, township 25, range 6, (being the land claimed by Jennie M. Arnold in her amended bill of complaint).

The said Josiah Fields will further testify that he selected the said land for his two daughters in the year 1891, and plowed around all of the S. E. ¼ of said section 13, in said year 1891, and that he was the first person to plow around said land.

He will further testify that he leased said land to Lamont Hull in 1893, for three years, and will further testify that Jennie M. Arnold never occupied or made any improvements thereon.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

769 Thereupon afterwards, to-wit: on the 22nd day of September, 1902, a replication was filed in said case, which said replication is in the words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

JENNIE M. ARNOLD
v.
UNITED STATES OF AMERICA ET AL. } No. 363, Doc. T.

The Replication of Jennie M. Arnold, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant, saving and reserving to herself, all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer, of the defendants, for replication thereunto, saith that she doth and will aver, maintain and prove her said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902. Geo. H. Thummel, clerk.

770 Thereupon afterwards, to-wit: at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal "1" of said court, to-wit:

JENNIE M. ARNOLD, Complainant,
vs.
THE UNITED STATES OF AMERICA, Nellie Fields, Nettie Fields, Minors; Bennie Saunsoci, a Minor; Richard White, Florence Filson, a Minor, and Charles P. Mathewson, Defendants. } Doc. T, No. 363. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the re-

spective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902. Geo. H. Thummel, clerk.

771 Thereupon afterwards to-wit:—on the 13th day of October, 1903, assignments of error were filed in said case, which said assignment of errors is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JENNIE M. ARNOLD, Complainant, vs. THE UNITED STATES OF AMERICA, Bennie Saunsoci, Nellie Fields, Nettie Fields, Florence Filson, and Richard White, Defendants.	Docket "T," No. 363. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.'

772 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Jennie M. Arnold and children were not entitled to claim and have allotted to them the land described in plaintiff's bill of complaint, to-wit: The southeast quarter, and the east half of the southwest quarter of section thirteen (13), and the north half of the southeast quarter of section twenty-four, all in township twenty-five (25), north of range six (6), east of the 6th P. M.

773 Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed, and that complainant be restored to all things lost by reason thereof.

JENNIE M. ARNOLD,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

774 Thereupon, to-wit:—on the 13th day of October, 1903, petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JENNIE M. ARNOLD, Complainant, vs. THE UNITED STATES OF AMERICA, BENNIE Saunsoci, Nellie Fields, Nettie Fields, Florence Filson, and Richard White, Defendants.	Docket "I," No. 363. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered

in the above entitled cause on the 8th day of November. 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives herself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States, and
775 that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

JENNIE M. ARNOLD,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

And now, on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903. Geo. H. Thummel, clerk.

Thereupon, to-wit:—on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following to-wit:—

776 363, "T."

Know all men by these presents, that we, Jennie M. Arnold and John H. Kuhn are held and firmly bound unto The United States of America, Nettie Fields, Nellie Fields, Bennie Saunsoci, Richard White and Florence Filson, in the full and just sum of one hundred dollars to be paid to the said The United States of America, Nettie Fields, Nellie Fields, Bennie Saunsoci, Richard White and Florence Filson heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this eighth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending

in said court between Jennie M. Arnold plaintiff and The United States of America. Nettie Fields, Nellie Fields, and Bennie Saunsoci, Florence Filson, Richard White, defendant- judgment was rendered against the said Jennie M. Arnold and the said Jennie M. Arnold has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America Nettie Fields, Nellie Fields, Bennie Saunsoci, Richard White, Florence Filson citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Jennie M. Arnold shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

JENNIE M. ARNOLD. [SEAL.]
JOHN H. KUHN. [SEAL.]
——— ———. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

777 Thereupon afterwards, to-wit: on the said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

778 The United States of America to the United States of America, Bennie Saunsoci, Nellie Fields, Nettie Fields, Florence Filson, and Richard White, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Jennie M. Arnold is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of

October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2006. No. 363 United States circuit court, district of Nebraska. Jennie M. Arnold *vs.* United States, *et al.* Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

778*a* Form No 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Bennie Saunsoci, Nellie Fields, Nettie Fields, Florence Filson and Richard White, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

778*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

779 Thereupon afterwards, to-wit: on the 10th day of May 1901, amended bill was filed in said case, which said amended bill is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHEL MONETTE, DAVID MONETTE, Jennie M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Alfred Hallowell, Defendants.

No. 364, Doc. T. Amended Bill of Complaint.

To the judges of the circuit court:

Michael Monette, Jennie M. Arnold, Cassie M. Karch and David Monette state that they are the heirs and legal representatives of the estate of Mary Monette, bring this their bill of complaint against the defendants and state that they are of what is known as mixed blood members of the Omaha tribe and that their mother Mary Monette was the daughter of Latadawe an Omaha Indian woman of the full blood and a member of the Omaha tribe. That both Latadawe and Mary Monette or Mary Bono were recognized members of said tribe.

Further complaining your orators say that on the 16th day of March A. D., 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof they received their present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including Margaret Sloan and her children. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United
780 States Statutes at Large vol. 10 page 1043, to which for greater certainty your orators refer.

And your orators further show that on the 6th day of March A. D., 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large col. 14 page 667 to which for greater certainty your orators beg to refer.

And further showing your orators say that on the 7th day of August A. D. 1882, an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the

Secretary of the Interior should allot certain lands of the Omaha reservation, either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one-quarter of a section, to each person over eighteen years of age one-eighth of a section, to each orphan child one-eighth of a section, to each other person under eighteen years of age one-sixteenth of a section. That all allotments should be selected by the Indians heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act set forth in the Statutes at Large vol. 22 page 341 to which for greater certainty your orators refer.

Your orators further show that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act on December 1884 and at sub-

781 sequent times since.

Your orators further say that on the 3rd day of March A. D., 1893 an act of Congress was passed amending or extending the act of August 7th, 1882, providing that with the consent of the Omaha tribe of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd 1893, but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council May 1899 and immediately thereafter assignment- for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimants.

And your orators further show that their mother Mary Monette was the child of Francis Bono and Latadawe, who was as hereinabove set forth an Omaha Indian woman and a member of said tribe. That she lived among the Omaha Indians a number of years prior to her death and was recognized by them as one of their own blood. That she removed to the present reservation upon receipt of letter from the special allotting agent in which she was notified that the tribal council had requested that she, Mary Monette, and her family be allotted land with other members of the tribe, which notice was sent to her through a special messenger but was

782 not received until after the work of allotting the lands had been completed. That as soon as the notice was received Mary Monette and her family removed to the Omaha reservation and selected land. That Mary Monette selected the following described land situate in Thurston county, Nebraska, to-wit:

The west half of the southwest quarter of section thirteen and the east half of the southeast quarter of section fourteen, all in township 25 north, range 6 east of the 6th P. M. in Nebraska; that such described property is a part of the land referred to in the treaties and acts of Congress herein above set out and has been surveyed in accordance with the treaties and acts of Congress; that your orators have placed valuable improvements upon the above described premises and that Alfred Hallowell was a claimant for said land claiming for some deceased children but that he assigned to Mary Monette for a consideration partially paid, selected and marked by said Mary Monette in accordance with the laws relating thereto and the notice received from the council of the Omaha tribe of Indians, and that it is occupied by your orators and she is the only person who has occupied said — under a claim of said land for allotment, and that the defendant The United States of America has not opposed the claims of your orator- to said land by reason of its having been selected or allotted to any other person.

And your orators further show that notwithstanding the facts herein above set forth and notwithstanding that they are within and under the provisions of the law entitled to an allotment of one hundred and sixty acres on behalf of their mother Mary Monette, as by her selected and above described, the defendant by and through its officers and agents refuses and neglects to make the allotment.

783 That since the commencement of this suit assignments have been made of the land to Silas Hallowell of the E. ½ of the S. E. ¼ of section 14, township 25, N. range 6 east and the W. ½ of the S. W. ¼ of section 13, township 25 north range 6 east to Wm. Baptisti Hallowell. That both are dead and they were minors, unmarried and without issue at the time of their death, and the sole heir to their estate is Alfred Hallowell their father who because of such title having been acquired during the pendency of this suit has become necessary parties hereto.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land and to place in possession the allottee or lessee, and that he threatens to place into possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainants who are now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land in controversy and his threats that he will remove your orators from the land make him a necessary party to this suit. And your orators further show to your honors that by an act of Congress approved the 15th day of August 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress or who claim to be so entitled under any allotment act, or any grant made by Congress,

may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action,
784 suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of a claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305 which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator- begs to refer.

Your orators further state that the defendant The United States of America claims that by virtue of the 4th art. of the treaty of March 6th 1865, it was provided that the assignment — be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to members thereof of full blood "including their half breed and mixed blood relatives now residing with them," and the defendant claims that your orators and their ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art., of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your orators admit that they and their ancestors were temporarily absent from the reservation at the time, but claim that such absence did not deprive them of the right of residence on the reservation nor the rights of allotment under the treaty of March 6th, 1865 nor their rights to allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that
785 the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871 contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865 nor at the time of making the schedule referred to; that under the provisions of the act of August 7th 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th 1882 who were not residing on the Omaha reservation at the time of making the treaty of March 6th 1865 nor at the time of making the selections in the year 1870, nor at the time

of approval of the schedule by the chiefs, the agent, the superintendent. nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation but who at all times and at the time of the treaty of March 6th, 1865, and ever since resided away from the reservation.

Your orators further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your orators further state that the defendant, The United States claims that the complainants for their ancestors have received
786 allotments of land under and by virtue of the treaty of July 15th, 1830, and 10th art., thereof and by the acceptance of said allotment under the policy of the Indian Office neither the complainant- nor Mary Monette their ancestor, are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your orators admit that their ancestor received an allotment of land under the provisions of the 10th art., of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by her nor given to her in consideration of the relinquishment of any other right than those to which she was entitled on the Nemaha reservation.

The numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art., of the treaty of July 30th, 1830, sums of money, which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th ch. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the treaty of the 6th of March 1865 and the subsequent act of Congress of August 7th, 1882; that your orators have not inany manner assigned or relinquished their right or claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Government nor by the enactment of any law authorized these
787 complainants or their ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by *this* complainant- or any member of this tribe has been accepted or approved by the United States or any of its officers.

Wherefore your orators show to your honors that they are without a remedy at law and remediless in the premises unless relieved by your honor- in this court of equity and they therefore pray the aid of the court in the premises and that said defendants, The United States of America, Charles P. Mathewson, and Alfred Hallowell may answer your orators' bill but without oath, answer under oath being expressly waived. That it be ordered and decreed that the patents issued to Wm. B. Hallowell and Silas Hallowell are null and void and that the selection as made by Mary Monette is prior and superior to their claim and is her allotment, and that she and her heirs are entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orators further pray for a preliminary order of injunction against the defendants Charles P. Mathewson and Alfred Hallowell enjoining and restraining each of them, their agents and employees from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your orators the most gracious writ of subpœna to be issued under the seal of this court direct- to the United States of America, Charles P. Mathewson, and Alfred Hallowell therein and thereby commanding them
788 on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainants.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed May 10 1901 Geo. H. Thummel, clerk.

789 Thereupon afterwards, to wit:—on the 31st day of July, 1901, answer to amended bill of complaintwas filed in said case, which said answer is in words and figures following, to wit:—

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, Jennie M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Alfred Hallowell, Defendants.

Doc. T, No. 364. Answer to Amended Bill of Complaint.

The answer of The United States of America, Charles P. Mathewson, Alfred Hallowell, defendants, to the amended bill of compiaint of Mitchell Monette, David Monette, Jennie M. Arnold, and Cassie M. Karch, complainants.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants for their joint and several answer say:

1. These defendants deny that Mary Monette, the mother of the complainant- is or ever was a member of the Omaha tribe of Indians in Nebraska, and deny that the complainants or their ancestors ever maintained or sustained tribal relations with the Omaha tribe
790 of Indians in Nebraska; and deny that they ever participated in the benefits and other rights of the said tribe; and deny that they were recognized by the United States as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainants claim to be heirs and legal representatives of Mary Monette, and that the said Mary Monette was the daughter of Latadaee, who had intermarried with one Francis Bono, and the defendant- avers that the said Francis Bono was a free born white man and a citizen of the United States, and that the said Mary Monette (*née* Bono) took the status of her father, and thereby became and was a white person and citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; and that the said Mary Monette lived with her parents in Richardson county, State of Nebraska, and in that vicinity, but not on the Omaha reservation up until the year —, when she intermarried with one —— Monette, who was a free born white man and citizen of the United States.

That there *was* born to the said —— Monette and his wife Mary Monette, the following children; Mitchell Monette, David Monette,

Jennie M. Arnold, *née* Monette, Cassie M. Karch, *née* Monette, and which children in law and in accordance with the rulings of the Interior Department in its government and control of Indian affairs, took the status of their father, and thereby became and were white persons and citizens of the United States, and were not and never became members of the Omaha tribe of Indians; and that the said parents together with their said children continued to live in Richardson county, State of Nebraska, and in that vicinity until after the approval of the act of Congress, August 7, 1882; and that the said Mary Monette came to the Omaha reservation about the year 1892 with the hope and expectation of obtaining an allotment of
791 land under said act as hereinafter more particularly set forth.

2. These defendants for further answer aver, that the complainants and their ancestors, did not live with the Omaha tribe of Indians on the reservation, at the time of the treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865 (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded the Monette family, being only mixed Indian blood, and not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said Monette family was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allot-
792 ments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the Monette family, or their ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the Monette family

complainants, nor any of their ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say, that after the act of Congress of August 7, 1882 (22 U. S. Stats. at Large p. 341) the said Monette family and other half breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands; and these defendants deny that the tribal council of the Omaha Indians ever requested that lands be allotted to the Monette family; and deny that the Monette family were requested by letter or otherwise, from the United States allotting agent, to come to the reservation, but to the contrary aver that the first allotment of lands under the act of 1882, was completed in the year 1884; and that the Monette family did not come to the vicinity of the Omaha reservation until the year 1892.

That the Omaha Indians on the said reservation manifested the most determined opposition to the Monette family and other mixed blood Indians of that class, being allowed to participate in
793 the distribution of the land, and from time to time individual cases were reported to the department by the special agent, charged with the work of allotting the lands for decision, as to the right of the party to receive allotment.

4. As showing the position taken by the Interior Department in deciding the cases of the absentee mixed bloods, the following is taken from the ruling of the department dated September 1883, relating to Celestine B. Kuhn, a member of the Barada family, the members of which family are similarly situated to the complainants herein, and have like suits pending, claiming the right to allotments of lands.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty 'shall be assigned to members of the tribe including their half or mixed blood relatives now residing with them.

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribe, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe
794 under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, why by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved and Mrs. Kuhn and family should be notified to remove from the reservation."

795 The department also made like ruling in the case of Euphrasia Peters, another of the mixed blood claimants of like class.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case. The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas. Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children. All of the Barada family took land in the half-breed Nehama reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here. Mr. Peters is a carpenter, and did service in St. Louis and on the Mis-

sissippi river for the Government during the war. He has excellent credentials as to character, and so has his wife.

Article 4 of the treaty of 1865, defines those entitled to lands to be 'members of the tribe including their half-breed or mixed blood relations now residing with them.'

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nehama and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not al-
796 lowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were borne upon the duly certified roll of 1871, or their descendant-, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

5. These defendants for further answer aver, that notwithstanding the ruling of the Department of the Interior above set forth, many half breed and mixed blood Indians in coming and remaining on the lands of the reservation, and as a result thereof, the members of the Omaha tribe of Indians caused petition to be prepared and transmitted to the Interior Department under date of March 19, 1888, in which they protested against the absentee half and mixed blood Indians coming upon the reservation and claiming the right to an allotment of lands, and requested the Interior Department to take action to remove all intruders from the lands of the reservation.

That the Commissioner of Indian Affairs acting on the said petition and protest, did under date of November 14, 1888, make his
797 report to the Secretary of the Interior and requested authority to remove said mixed blood claimants from the said reservation, and that afterward on the 5th day of December 1888, the Secretary of the Interior directed the removal of the said mixed blood claimants from the said reservation, and which said order and judgment is as follows:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wished on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865, (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is nor borne upon the duly certified roll of 1871. submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation,
798 and the allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relatives residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary*.

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

6. These defendants for further answer aver, that under article 10, of the treaty of July 15, 1830 (7. U. S. Statutes at Large 328–330) and under the provisions of section 5 (4) of an act of Congress
799 approved July 31, 1854 (10 U. S. Statutes at Large, 332) a patent was issued to Francis Bono for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Francis Bono and his descendants including complainant were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

7. These defendants further aver that the preference right to select lands for allotment under the act of Congress, August 7, 1882, (22 U. S. Statutes at Large, 342) is confined by section (5) of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the treaty with Omahas concluding March 6, 1865, and Monette family had not received and were not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof, the said Monette family did not have and could not acquire any such interest in the lands described in the amended petition as would descend to her heirs, to-wit, the present complainants.

These defendants further aver that the act of Congress of August 7, 1882, does not contemplate the making of allotments to heirs, or the issue of patents to heirs for lands claimed to have been selected by their ancestors, neither can such allotment be made to or patent issued to the deceased Mary Monette; that under the act of 1882, as well as under the act amendatory thereof, (22 U. S. Statutes at Large 630) allotments of lands cannot be made to deceased persons but only to living persons, and that the present complainants can only claim allotment to land in their own right, and each of the present complainants have separate suits pending in which they claim for themselves severally, the right to an allotment of lands dis-
800 tinct from and separate from the land described in the present amended bill of complaint.

8. And these defendants for further answer say that Mary Monette was not the head of a family during any of the time she claims to have lived on the reservation, and hence was not entitled to claim by way of allotment the 160 acres of land described in the amended bill of complaint, but her right to allotment, if any she had, would be limited under the law of 80 acres of land.

9. These defendants for further answer aver that Mary Monette did not select for allotment, and did not occupy or make any improvements on any of the lands described in the amended bill of complaint, and that the pretended claim to the said lands is apparently an afterthought made by the pretended heirs of Mary Monette,

in an effort thereby to acquire titles to lands in addition to lands they might otherwise claim under their own names and separate rights.

10. That the said United States allotting agent did find upon investigation that the E. ½ of the S. E. ¼ of section 14, township 25, range 6 E, had been selected for allotment by Silas Hallowell, and that the W. ½ of the S. W. ¼ of section 13, had been selected for allotment for and in behalf of William Hallowell; and that said allotting agent did further find upon investigation as a fact, that the said E. ½ of the S. E. ¼ of section 14, and the W. ½ of the S. W. ¼ of section 13, had been selected and occupied by Alfred Hallowell as early as the first of June 1893, for and in behalf of his sons Silas Hallowell and William Hallowell, and that in pursuance of said selection the said Alfred Hallowell had continued to occupy the said lands either in person or by and through tenants down to the
801 time of said allotments, and the said United States allotting agent did make the said Hallowells respectively, allotment therefor, and thereafter made his official report to the Commissioner of Indian Affairs of said allotments respectively, and that the said Hallowells were entitled to the lands allotted to them respectively, as above described, and which said allotments were subsequently approved by the Commissioner of Indian Affairs and by the Secretary of the Interior, and patents therefor have been issued to the said Silas Hallowell and William Hallowell respectively, under date of April 11, 1900, and which said allotments were made and said patents issued in the regular and due course of business.

These defendants further aver that the complainant herein, did not have any prior or separate or vested right to the lands so patented to the said Silas Hallowell and William Hallowell respectively, and that the said allotments to them and the said patents to them were made in all respects in conformity to law.

11. And these defendants further aver that the United States allotting agent reserved for the Monette family, pending this litigation and subject to the result thereof, the following land to-wit: The northeast quarter of section 13, township 25, north of range 6 east; the east half of the northeast quarter of section 14, township 25, north of range 6, east; the south half of the southwest quarter of section 12, township 25, north of range 6 east; the southeast quarter of section 10; the northeast quarter of section 15, the north half of the southeast quarter of section 14, the northwest quarter of the southwest quarter of section 11, the east half of the southwest quarter of section 10, the northwest quarter of the southwest quarter of section 10, the southwest quarter of the northwest quarter of section 10, and the southeast quarter of the northeast quar-
802 ter of section 10, and the southeast quarter of the northeast quarter of section 9, all in township 25, north of range 7 east, and which said reservation has been noted upon the maps in the office of the Commissioner of Indian Affairs.

12. And these defendants say; that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of those defendants, and these defendants deny that the said complainants are entitled to the relief or any part thereof in the said complainant demanded. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JNO. L. WEBSTER,
W. S. SUMMERS,
U. S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 31 1901 Geo. H. Thummel, clerk.

803 Thereupon afterwards, to-wit: on the 21st day of August 1902, stipulation of facts and stipulation on evidence were filed in said case, which said stipulations are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Alfred Hallowell, Defendants.

Doc. T, No. 364.
Stipulation of Facts.

In the above entitled case the parties do hereby stipulate that the following facts and matters are true for the purposes of this suit.

First. That La-ta-da-we was a full blood Omaha Indian and married Francis Bono, who was a free born full blood white man, of French descent, and a citizen of the United States. Said marriage took place about the year 1839, in what is now the northeastern part of Nebraska, but which was then Indian country.

Second. That there was born to said Francis Bono and his wife, La-ta-da-we, the following child, Mary Bono, born 1836. That said Mary Bono married Mitchell Monette, a free born full blood white man, of French descent and a citizen of the United States, which said marriage took place in the year 1856 at city of Brownville, Nebraska.

Third. That there *was* born to Mitchell Monette and his wife the following children: Jennie M. Arnold *née* Monette born 1862,

Mitchell Monette born 1868, David Monette born 1860, Cassie M. Karch born 1872.

804 Fourth. That Mary Bono (afterward Mary Monette) received a patent for 320 acres of land on the so called Nemaha reservation, said patent being issued under sec. 5, (4) of act of Congress of July 31, 1854 (10 U. S. Statutes 332) to carry into effect article 10 of treaty of July 15, 1830 (7 U. S. Stat. 328).

Fifth. That the Monette family removed from the Nemaha reservation to the Omaha reservation about the year 1890. That Mitchell Monette (the father) died about 1893, and Mary Monette the mother died the 14th day of February 1893. That Mary Bono (afterward Mary Monette) received an annuity payment September 22, 1856 as appears from certified record on file, and no annuity payments have been made to her descendants.

Sixth. That Jennie M. Arnold *née* Monette was born 1862 at Nemaha reservation, where her parents resided, and she continued to reside there until she married D. Arnold, a full blood white and a son of Doctor Arnold of Omaha. Said marriage took place in city of Brownville, Nebraska, where D. Arnold then resided in 1882. She lived in Omaha thereafter until 1890 when she and her husband separated. She then came to live with her parents on the Omaha reservation in 1890, and remained with them about two years, and sent her children to the Indian school at Genoa where they remained two years, and one year at agency school. Mrs. Arnold in 1892 removed from the reservation to the town of Pender where she engaged in dressmaking and remained in Pender until 1894, when she returned to the city of Omaha where she has since continued to live and now resides. She has born- to herself and her husband the following children. Benjamin Arnold born 1883, Don Arnold born 1882. Both said children being born in the city of Omaha.

805 Seventh. Mitchell Monette Jr., — born 1868 on the Nemaha reservation and married a full blood white woman in 1890, and removed to the Omaha reservation in 1891 or about that date, and has resided there ever since. There *was* born to Mitchell Monette and his wife the following children, to-wit: Earl Monette born Sept. 26, 1890, Victor A. Monette born Jan. 16, 1892, Floyd Monette, — January 14, 1897, Myrle Monette born March 8, 1900, Fay Monette born Sept. 8, 1897.

Eighth. David Monette was born about 1860 on the Nemaha reservation and came to Omaha reservation about 1890, and has resided there ever since but has no suit pending for allotment of land.

Ninth. Cassie M. Karch *née* Monette was born about 1872 on Nemaha reservation and came to Omaha reservation with her parents about 1890. She married Jacob Karch, a full blood white man, said marriage took place November, 1892 at Pender, Nebraska. She and her husband have since then lived on the Omaha reservation.

Tenth. That no one of the Monette family or their ancestors mentioned in this stipulation received or had an assignment or certifi-

cate of assignment under article 4 of the treaty of March 6, 1865 (14 U. S. Stat. 667). That a schedule of selections of land in severalty in accordance with said fourth article and the prescribed rules and regulations of the Office of Indian Affairs, approved by the Hon. Secretary of the Interior October 26, 1867, showing the names of those entitled to assignments of lands, and their respective tracts was duly certified by the chiefs of the Omaha tribe, and certified and submitted by the Omaha Indian agent to the Commissioner of Indian Affairs, December 30, 1870, and approved by the Secretary of the Interior January 26, 1871. That none of the names of
806 the respective Sloan, Barada, Peters or Frost or Monette families in this stipulation mentioned appear on said schedule.

Eleventh. The Commissioner of Indian Affairs under date of April 24, 1899, appointed John K. Rankin, U. S. special agent to make allotment of lands to the Omaha tribe of Indians, under the clause of the Indian appropriation act of March 3, 1893, amendatory of the act of August 7, 1882, and said John K. Rankin in May 1899 arrived at the Omaha Indian reservation and continued in the performance of his duty as such special allotting agent until February 1900, and that the allotments by him made hereinafter referred to, were completed in the month of January 1900, and the schedule of said allotments *were* signed by the said John K. Rankin U. S. special agent and transmitted by him to the Commissioner of Indian Affairs, and which said schedule of allotments was approved by the Commissioner of Indian Affairs, and by the Commissioner transmitted to the office of the Secretary of the Interior and approved by the Secretary of the Interior and transmitted from the office of the Secretary of the Interior to the General Land Office under date of February 6, 1900, for the purpose of having patents issued to the allottees, and that patents to respective allottees were issued under date of April 11th, *either* to the respective allottees hereinafter mentioned for the lands to them respectively allotted.

Twelfth. That the said John K. Rankin, U. S. special agent declined to make allotments to the respective complainants, on the ground that they were not entitled to lands claimed by them respectively.

807 But the said John K. Rankin did make allotments of some of the lands claimed by the respective complainants to various other persons as follows, to-wit:

Mitchell Monette makes claim to the W. ½ of the N. W. ¼ of sec. 13, and the E. ½ of the N. E. ¼ of section 13, and for his son Victor A. Monette, the S. ½ of the N. E. ¼ of section 24, all in township 25, N. range 6, east of the 6th P. M. in Nebraska. Rankin allotted of said lands the south half of the N. E. ¼ of section 24, to George Fields and Joseph Fields. The remainder of lands claimed by Mitchell Monette are included in the reserved list. Jennie M. Arnold claims:

The S. E. ¼ of section 13, township 25, N. range 6, east, and for her son, Benjamin Arnold, the E. ½ of the S. W. ¼ of section 13, town-

ship 25, N. range 6, east, and for her minor son, Don Arnold, the N. ½ of the S. E. ¼ of section 24, township 25, N. range 6, east of the 6th P. M. in Nebraska. Of said lands there has been allotted, the S. E. ¼ of section 13, to Nellie Fields and Nettie Fields—the E. ½ of the S. W. ¼ of section 13, to Bennie Saunsoci the E. ½ of S. E. ¼ of section 24, to Florence Filson. Cassie M. Karch claims the S. W. ¼ of section 12, township 25, north and range 6, east of the 6th P. M. in Nebraska. Of said lands the N. ½ of the S. W. ¼ of section 12, has been allotted to Nice Day Hallowell, and the remainder is on the reserved list.

That the heirs of Mary Monette make claim to the — W. ½ of the S. W. ¼ of section 13, and the E. ½ of the S. E. ¼ of section 14, township 25, range 6 east of said lands. The E. ½ of the S. E. ¼ of section 14, has been allotted to Silas Hallowell and the W. ½ of the S. W. ¼ of section 13, has been allotted to Baptisti Hallowell.

808 Thirteenth. That the said John K. Rankin, U. S. special allotting agent did reserve for the Monette family, pending the result of this litigations the following land, to-wit: The S. ½ of the S. W. ¼ of section 11; the S. ½ of the S. W. ¼ of section 12; the E. ½ of the N. E. ¼ of section 14; and the N. W. ¼ of section 13, all in township 25 R. 6 E.; and the N. E. ¼ of section 15, and the S. E. ¼ of section 10; and the E. ½ and the N. W. ¼ of the S. W. ¼ of section 10; and the N. W. ¼ of the S. W. ¼ of section 11; and the S. W. ¼ of the N. W. ¼ of section 10, and the S. E. ¼ of the N. E. ¼ of section 9, all in township 25, R. 7, E., and which said reservations reported by him to the Commissioner of Indian Affairs, and the lands so reserved have been designated upon the maps in the office of the Commissioner of Indian Affairs, pending the result of these litigations, and out of which allotments may hereafter be made to the different members of the Monette family, should it be determined that they or any of them be entitled to allotments of lands on the Omaha Indian reservation.

Signed subject to correction of clerical errors.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

809 In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, Jennie M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Alfred Hallowell, Defendants.

No. 364, Doc. T.
Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the complainant-, to the facts set down after the-names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Mitchell Monette will testify that Mary Monette died February 14, 1893. That she made the selections of the land claimed by her in the year 1892; that Mary Monette at that time made a contract with Alfred Hallowell (the father of Silas Hallowell and Baptiste Hallowell) to buy out Hallowell's right to the lands since allotted to Silas Hallowell and Baptiste Hallowell, to-wit: The E. ½ of the S. E. ¼ of section 14, and the W. ½ of the S. W. ¼ of section 13, township 25, range 6.

That Mary Monette was to pay Hallowell $50.00 for Hallowell's right to the land, and the purchase was to be completed in the next spring (1893). That the contract was not in writing, that Mary Monette paid some money on the contract at the time it was made, but the witness does not know how much money was paid, and that the parties did not come together in the spring of 1893, to complete the purchase right under that contract.

810 Mary Monette lived with her family on the N. W. ¼ of the S. E. ¼ of section 14, township 25, range 6, up until the time of her death; said land was tribal land at the time and has since been allotted to Fontenelle but is not in controversy in this suit.

Cassie M. Karch — that she is a daughter of Mary Monette and that she and her mother were making their home together at the time of her mother's death. That they were living upon the land adjoining the E. ½ of the S. E. ¼ of section 14, and the W. ½ of the S. W. ¼ of section 13, twp. 25, N. and range 6 east. That she knows of Alfred Hallowell coming to the house and arranging to release the land described to her mother. That Hallowell was given his meals and some money was paid on the agreement. That Hallowell then claimed that he and Simeon Hallowell had marked and claimed more land than they were entitled to. That he wanted to get something out of this claim as he was going to take other land near the

river where he could get more rent for it. That there was a horse Hallowell wanted and it was agreed that he could have either the horse or the fifty dollars in addition to what was paid when the allotment was made. It was then expected that the allotment would be made the following year.

Samuel H. Campbell will testify that during the year 1884 he was on the Omaha reservation. That he was there to see about allotments of land for his wife and children. That he is a white man and his wife is one half Omaha Indian. That at the time he and his family were living in Richardson county, Nebr., upon the lands that had been allotted to half-breeds of the Omaha and other tribes. That at a council of the tribe an Indian known as Wook Tick asked to have his sister and her family allotted.

811 That the council told the allotting agent to send for her and she wrote a letter directing this Indian's sister, Mrs. Monette, to come to the reservation at once. That the letter was given to him to deliver and he agreed to deliver it to Mrs. Monette. That when he got near home he learned that some of his family were sick. That he hurried home and gave the letter to a neighbor to deliver to Mrs. Monette, for a long time. That allotments were made to my wife and to all the children.

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, Jennie M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Alfred Hallowell, Defendants.

Doc. T, No. 364. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Alfred Hallowell will testify that he is the father of Silas Hallowell and William Hallowell, and that in the year 1892, — selected and plowed around 160 acres of land including the E. ½ of the *E. S.* ¼ of section 14, allotted to Silas Hallowell, and the W. ½ of the S. W. ¼ of section 13, township 25, range 6, allotted to William Hallowell.

812 Alfred Hallowell will further testify that in the year 1893 he made a lease of the land for a period of five years. The original of which lease is attached to the affidavit of John K. Rankin, filed in the Mitchell Monette case Doc. T. No. 364 to which reference is made as a part hereof.

He will further testify that he employed S. H. Campbell to stake off and break the land claimed by him for his son Silas Hallowell.

Josiah Fields will further testify that in 1898 he notified the Indian agent of his selection of the said lands for Silas Hallowell and William Hallowell, and received from W. C. Strong, clerk of the Indian agency a memorandum in writing thereof, which reads as follows:

W. ½ of the S. W. ¼ of section 13 for Hundunmoni. } Township 25
E. ½ of the S. E. ¼ of section 14 for Hasunedah. } range 6 E.

Nebraska selections for children.
Entered January 29 1898.

W. C. STRONG, *Clerk.*

(The names in said certificate are the Indian names for Silas and William Hallowell.)

Mr. S. H. Campbell, will testify that Alfred Hallowell in the year 1893 employed him (Campbell) to stake around and break up said land, and that in pursuance of said employment he, (Campbell) staked around the E. ½ of the S. E. ¼ of section 14, (being the land allotted to Silas Hallowell) and broke a part of the said land so allotted to Silas Hallowell. That the land staked around was 80 acres, but the amount of land broken was 40 acres.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

813 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, depositions were filed in said case, which said depositions are in words and figures following, to-wit:

Depositions Behalf Defendants.

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.
} Docket T, No. 364.

Testimony taken in behalf of the defendant-, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at Pender, in the State of Nebraska, on this 22nd day of August, 1902, the complainants being represented by Thomas L. Sloan, Esq., and the defendants by John L. Webster, Esq.

Index to Witnesses.

Name of witness.	Direct.	Cross.
Ellis Blackbird	1	6
Richard Robinson	9	12
Simeon Hallowell	15	16
Hiram Chase	18	20
Alfred Hallowell	23	24

ELLIS BLACKBIRD (Indian name is Shongaska, meaning White Horse) a witness, produced in behalf of the defendants, being first duly sworn, deposes and says as follows:

HIRAM CHASE, after taking the usual interpreter's oath, acted as interpreter.

Direct examination by Mr. JOHN L. WEBSTER:

814 Q. Are you a full blood Indian?
A. Yes sir.
Q. How old are you?
A. About 71 years.
Q. Were you a member of the Omaha tribe of Indians in 1884?
A. Yes sir.
Q. Do you remember the time when Alice C. Fletcher was at the agency as United States allotting agent?
A. I remember that, and I was there, and living there on the reservation.
Q. Was you a member of the Omaha council at that time?
A. I was.

Q. Do you know Mary Monette, and the members of the Monette family, her children?

A. I know them.

Q. Anna Cabana states that a council was held in June, 1884 at the mission on the Omaha reservation when Miss Fletcher the allotting agent was present, at which time an Indian by the name of Wood Tick stated to the council that he wanted his sister Mary Monette, to receive an allotment on land on the Omaha reservation; that Mary Monette at that time was on the Nemaha reservation; that the council consented that Mary Monette should be invited to come to the Omaha reservation and receive an allotment of lands, and requested the allotting agent, Alice C. Fletcher to write a letter to be transmitted to Mary Monette requesting her to come to the reservation for the purpose of receiving an allotment of lands. Do you know of such council meeting being held, and do you know anything about the council agreeing that Mrs. Monette should be written to, to come to the reservation, and that she should have an allotment of lands, and anything about such a letter being written by
815 the allotting agent Alice C. Fletcher?

A. I do not know anything about it. I might have been away when such a thing as that occurred, but I do not know anything about it. If I knew of such a meeting as that I would remember it. I do not know of such a meeting as that, and I do not know of any of the occurrences stated. What I know about Mary Monette, is that I know that she was an Omaha blood, but as to sending for her in the manner that was stated I do not know anything about it.

Q. Did you attend the council meetings held at that time as you knew anything about them?

A. He says that he attended regularly but there are times that he missed councils when things that occurred that he did not know anything about. On this subject he never knew anything about it. He said he thought that Sinta Haha should know more about the matter that he did.

Q. Was the subject matter or question of inviting Mrs. Monette to come to the reservation talked of at any council meeting that he attended.

A. He did not hear of any such subject. The only time that the subject of Mary Monette was broached to him was since her death, and this Wood Tick, her half brother, a full blood Omaha, had a conversation with me to use my influence in this manner, making this statement; Wood Tick made this statement to White Horse, that inasmuch as he had not urged the claim of Mary Monette to allotment on the Omaha reservation, he asked White Horse's influence to help the children of Mary Monette to get allotments; they know that the mother of the Monettes, that she was a full blood Omaha, and her name was Thah-ta-dah-we.

Q. How long was it that Wood Tick talked to you in behalf of the children of Mary Monette?

816 A. During Rankin's allotment (he did not say Rankin, but I know what he meant) he meant the last allotment, since the act of 1893 took effect, the amendatory act to this original allotment bill of 1882 is what he meant instead of the former statement. I made a mistake. I understood him to say since the last allotment. He is speaking of an Indian custom in the manner that he, Wood Tick spoke to him, telling the witness here that their younger brothers, meaning the Monettes would wait on White Horse at some future time, and bring something for him, to have a kind of a feast like, and talk over the matter, so as to enlist White Horse's influence to get the boys in on the allotment.

Q. Were the council during the time the allotments were being made under the act of 1882, and down to the present time, opposed to the mixed bloods who have these pending suits being admitted into the tribe and to the receiving of allotments of lands?

A. He says that in regard to these people that are bringing suits, even before the Miss Fletcher allotments, talks among the Indians had been made to exclude these people on account of the provision in the same treaty. He did not say what year, but I suppose it is understood what treaty he means. And for that reason it has been—they have been denied rights on the reservation.

Q. Did they make known to Miss Fletcher their objection to these persons who have these suits, and object to them receiving any allotments of lands?

A. He said if they had not objected that they would have the lands today, and he said that the objections must be the cause for them not having their lands.

817 Q. Did they make this objection known to Alice C. Fletcher, the allotting agent?

A. Yes, she knew it.

Q. Did that objection still exist when Rankin was here as allotting agent?

A. Yes sir; the objection existed.

Q. Did Rankin know of this objection?

A. He knew it. The council had a meeting with Rankin and informed him of their objections against any of these parties taking lands.

Q. By these parties, do you mean the parties who have these pending suits?

A. Yes sir; the same parties.

Cross examination.

Questions by Mr. T. L. SLOAN:

Q. Were there any persons upon the reservation not in the suits that they were willing should be allotted by Rankin, belonging to the same family?

A. There was no talk in a public way in regard to anything of that kind.

Q. You limited that question to the Monette question?

A. Yes sir.

Q. Ask him if there were any of the Barada family who were not in the suits toward whom they felt that Rankin should make allotments?

A. He said, what he understood though, was this; it was with reference to William Barada that at the time that he was up among the Sioux and returned, he understood that Barada had called the council together—Omaha council together, and as he understood it for the purpose of being allotted; that he had given kind of a
818 feast, but as to what was finally determined or done in that matter, he says he is ignorant of. And the same fall after this meeting, Mr. Barada also made a—had an arrangement made for the council to come together at some woods, and had something there for the people to feast on for the purpose of presenting his wishes about allotments, but nobody had reached there, and he alone went to the place, and Barada came home without affecting anything. They had not heard of anything like a public assurance of giving lands to Mr. Barada, for Mr. Barada to have allotments on the Omaha reservation.

Q. There is however a feeling among a number of the councilmen that Barada is entitled to an allotment?

A. He don't know of any, except that Fontenelle while councilman gave his opinion that it was his wish that Mr. Barada should have an allotment, but he was very doubtful whether a consent could be had—proper consent could be had of the tribe. He does not know, and never heard of any encouragement given by any person by saying that they would give lands to Mr. Barada yet.

Q. Is Barada related to Mary Jane Paul?

A. He does not know. He says, in those matters as to relationship of these parties, he does not know, and that there is only one person that he knows of that could tell positively as to what relations they were, and that was Thomas Dick now living among the Omahas.

Mr. WEBSTER: It is agreed that the William Barada referred to in the above questions and answers is not a complainant in any of the pending suits.

Q. Are Mary Jane Paul and Marthi-Shon one and the same person?

A. He knows of the name of Marthi Shon, but he does not know the other name.

819 Mr. WEBSTER: It is agreed between the parties that Hiram Chase will testify that Mary Jane Paul and Marthi Shon is one and the same person.

Witness excused.

By consent of the parties hereto, it is agreed that the signature of the witness to the above deposition is hereby waived.

820 (RICHARD) CHARLES ROBINSON (whose Indian name is Munca-wa-tha), a witness produced in behalf of the defendants, being first duly sworn, testified as follows:

HIRAM CHASE being duly sworn, acted as interpreter.

Direct examination by Mr. JOHN L. WEBSTER:

Q. Are you a full blood Indian?

A. I am.

Q. And a member of the tribe?

A. Yes sir.

Q. How old are you?

A. About 80 years.

Q. Were you a member of the tribe when Alice Fletcher was acting as allotting agent in 1883 and 1884?

A. I was, yes sir.

Q. Have you at any time been a member of the Omaha council, and if so, about when?

A. He said he was a member of the council during Beck's administration.

Q. Did you know Mary Monette in her life time?

A. Yes I knew her.

Q. Did you hear the question that was put to White Horse about a council meeting held in June, 1884, and of the letter which Mrs. Cabana said was written to Mrs. Monette to come from the Nemaha to the Omaha reservation?

A. I was police at that time, and I do not know anything of such an occurrence. Yes, he heard what was asked White Horse, and what he knew about it, was he was police at the time and

821 does not know of such occurrence.

Q. Did Mrs. Monette at any time talk to you about her claim to an allotment, and is so state the circumstances?

A. Subsequent to, and during Beck's administration him and Wajapa came out here where Mrs. Monette was living at Mrs. Monette's solicitation, and they were there, and they had a conversation with her, and at the conversation there had she never spoke one word about the letter that was mentioned in this testimony. He said that that letter seemed to him of so great importance that it seemed to him that she should have stated it, but instead of mentioning that letter she plead with these two men to be let in on the reservation for allotment.

Q. Was the Wajapa the same Wajapa who was a member of the council during the Fletcher allotment?

A. Wajapa was not a councilman—(question withdrawn).

Q. Did you mean by your answer that Wajapa was not a councilman when Miss Fletcher was here allotting lands?

A. He says he was not. He does not remember, but at any rate what he means to say is that Wajapa was not a councilman; that the witness was a police at the time.

Q. There is only one person that is known in the tribe as Wajapa?

Mr. SLOAN: We will agree to that.

Mr. WEBSTER: It is agreed between the parties that there is but one man in the tribe known as Wajapa.

Q. Did you ever hear of this letter said to have been written to Mary Monette before the taking of this testimony today?

A. Never heard of it; never heard of it.

Q. Do you know of any council meeting at which the council ever agreed or consented that Mrs. Monette or her children might have allotments on the Omaha reservation, or should be in-

822 vited to come to the Omaha reservation?

A. Never did.

Q. Had the council been opposed to Mrs. Monette and children receiving allotments on the Omaha reservation?

A. Never heard anything of it.

Q. Have the Omaha Indians as a tribe been opposed to Mary Monette and the other persons who have these pending suits being adopted into the tribe or receiving allotments of lands?

A. The people have said that they did not want to take them into the tribe, and they do not know them.

Q. Did the Indian council make known their objections to these people who have these pending suits to the allotting agent Fletcher, and to the allotting agent Rankin?

A. He says that one reason of not taking these people in was Miss Fletcher's influence and cause.

Q. Did the Indians talk to the allotting agent Fletcher about these Indians, and their objections to them being adopted into the tribe?

A. He did not hear it.

Mr. WEBSTER: It is agreed between the parties that Beck's administration was from 1893 to 1897.

Cross examination.

Questions by Mr. THOMAS L. SLOAN:

Q. Do you know Wood Tick?

A. Yes sir; he is my friend.

Q. When you called on Mrs. Monette she spoke to you in the Omaha language, did she not?

A. Yes sir.

Q. And you knew her mother, did you not, La-ta-da-we?

A. Yes sir.

Q. You want this Omaha woman cut off of her rights for allotment, do you?

823 A. Yes sir.

Q. You felt that way for a good many years?

A. Yes sir.

Q. You were policeman during the time that Miss Fletcher was here?
A. Yes sir; I was.
Q. Do you remember of two boys arrested during that time?
A. Yes sir.
Q. Who were they?
A. One was tied with a chain. One was Sloan (meaning Thomas L. Sloan) and the other one was the interpreter (meaning Hiram Chase).
Q. You treated them the same as other Indians, did you not at that time?
A. Yes sir.
Q. And the agent had them locked up in the block house?
A. Yes sir.
Q. You stayed outside and guarded and watched them?
A. Yes sir.
Q. Do you remember which one of the councilmen — was that got them released?
A. The agent.
Q. Do you know which councilman said to the agent, and got him to do it?
A. It was Ebahamba.
Q. You say Wood Tick is your friend?
A. Yes sir.
Q. But you are not a friend to his sister, is that right?
A. Yes sir.
Q. And because of your ill feeling to her you would be willing that she be deprived of her land as an Omaha Indian?
A. Yes sir.

824 Re-direct examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Mary Monette is not a full sister of Wood Tick, is she?
A. No, they are not.

Mr. WEBSTER: It is agreed that Mary Monette was only a half sister of Wood Tick.

Q. Wood Tick was a full blooded Omaha Indian living on the Omaha reservation as a member of the Omaha tribe, and he never had an allotment on the Nemaha reservation?
A. He lived among the Omahas.

Witness excused.
By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

825 SIMEON HALLOWELL, a witness, produced in behalf of the defendant-, being first duly sworn, deposes and says as follows:

HIRAM CHASE being duly sworn, acted as interpreter.

Direct examination by Mr. JOHN L. WEBSTER:

Q. You are a member of the Omaha tribe of Indians?
A. Yes, sir.
Q. How old are you?
A. I am 45 last June.
Q. Do you remember when Alice Fletcher was acting as allotting agent?
A. Yes sir.
Q. Do you know Wood Tick?
A. Yes sir.
Q. Have you been a member of the Omaha council?
A. Yes sir.
Q. When?
A. I was last year. My time is out this spring.
Q. Did you hold any position as councilman or policeman when Miss Fletcher was allotting lands?
A. No sir.
Q. Have you heard all the testimony given by Anna Cabana about a council meeting being held in June 1884, and the council asking Allot-ing Agent Fletcher to write a letter to Mary Monette to come to the Omaha reservation and receive an allotment of lands?
A. No sir.
Q. Did you know Mary Monette in her life time?
A. I heard about her, but I never seen her.
Q. Did you ever hear of Allotting Agent Fletcher writing a letter to Mary Monette to come from the Nemaha reservation to
826 the Omaha reservation?
A. No sir.
Q. Did you ever know of the Indian council wanting Mary Monette to come here and get an allotment?
A. There is no such thing that I heard of.
Q. Have the Omaha Indians at all times been opposed to these mixed bloods who have these pending suits having allotments of lands on the Omaha reservation?
A. Yes sir.

Cross examination.

Questions by Mr. THOMAS L. SLOAN:

Q. When did you get back from Europe?
A. In 1884.
Q. What time of the year?
A. August 25th.

Q. When did you leave?
A. I left in 1883, September, the 10th of September.

Re-direct examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Do you know Eberhamba?
A. Yes sir.
Q. Was he a member of the council when Miss Fletcher was allotting lands in 1883 and 1884?
A. Yes sir.
Q. Do you know whether Eberhambe attended council meetings in 1884, and if not, state why he did not?
A. He said he was away at the time before he could get his knowledge of the affair. He was in Europe at the time.
Q. State your knowledge, whatever it is?
A. When he got back he learned that his father was very sick during the month of June and could not get out of bed.
827 That was in 1884. He believe- he was not there at any council during the month. He died on the fourth day of July, 1884.
Q. How long had he been sick, do you know?
A. November, 1883, from November 1883, up to the time of his death; he was hurt, he got injured.
Q. Was he your father?
A. Yes sir.

Witness excused.
By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

828 HIRAM CHASE, a witness, produced in behalf of the defendants, being first duly sworn, deposes and says, as follows:

Direct examination by Mr. JOHN L. WEBSTER:

Q. Are you a member of the Omaha tribe?
A. I am.
Q. And at present a member of the council?
A. I am.
Q. Did you know Eberhambe in his life time?
A. I did.
Q. Do you know what his physical condition was from November, 1883 to July 1884?
A. I do.
Q. What was it?
A. From the fall of 1883, about November, he took sick. I visited him often, and he complained of being wrenched in driving cattle; he was driving cattle on horseback, and from that time on

he was sick, and was growing worse, and was in bed towards spring, most all the time up to the time of his death. He died about the 14th day of July, 1884.

Q. Was he in a condition to attend a council meeting in June, 1884?

A. He was not.

Q. Did you hear read over to you by the stenographer taking these depositions, the testimony of Anna Cabana about a council-meeting held in June, 1884 at which the allotting agent was requested to write a letter to Mary Monette to come from the Nemaha reservation to the Omaha reservation and receive an allotment of lands?

A. I did.

Q. When did you first hear about that instance or circumstance?

A. I have never heard any—I have never heard my—I have
829 no recollection of any such thing as that until the matter was brought to my attention today. In fact I was around those councils at that time. I did not know anything of it.

Q. Were you during those years, 1883 and 1884 familiar with the affairs about the agency?

A. A great deal of them.

Q. Was you yourself interested in a general way in the allotment of lands?

A. I was the same as the rest of them.

Q. If anything of that kind occurred at the council meeting from your knowledge of Omaha Indian tribal affairs, would or would it not have been a matter which had been generally talked about among the Indian tribe?

A. I rather think it should, but still there are things that have occurred that I did not know until away afterwards in the matter of the Lewis, Neal and Pilcher case, I heard it from public repute, I was not there, how it was done by the council or what was agreed on, and often times even matters of that kind escape our attention until brought to us.

Q. What I want to get at is if this incident had occurred, was it one which from your knowledge of Indian affairs you would say would have been talked about among the head men of the tribe?

A. I think it would, yes sir.

Q. It was then a matter of considerable discussion about who should and who should not receive allotments of lands, was it not?

A. Yes sir; at those times there was quite a good deal.

Q. But this affair never came to your attention until the taking of this deposition today?

A. No sir; no recollection of anything like it. The inci-
830 dent about Antoine Barada, I remember that through hearsay and common repute, which I remembered all these years; Antoine Barada having a place out there at the Provos. I did not see him; I had a curiosity to see him, but I did not see him and I went home. It was mentioned today.

Cross examination.

Questions by Mr. THOMAS L. SLOAN:

Q. You and Miss Fletcher were not on friendly relations?
A. Never was.
Q. Was she arbitrary in her official matters?
A. I think so in some things.
Q. Partiality, and showed a great deal of favoritism?
A. I think she did.
Q. And had a disposition to control the council to aid her friends?
A. Yes sir; like most all other officials when they have a mind to, I do not make her an exception.
Q. You are aware that she exercised those influences to a considerable extent?
A. Yes sir.
Q. When she chose to favor she did so, and influenced the council to that extent?
A. I believe she did.

Re-direct examination.

Questions by Mr. JOHN L. WEBSTER:

Q. About that time, Mr. Chase, you were interested with Tom Sloan and others in trying to get some allotments for the mixed bloods, were you not?
A. Not just at that time, but after Mr. Sloan and Aunt Margaret Sloan, as we used to call her, were here, and I had very friendly relations with them on account of a statement made to me
831 in our Indian family that she was actually related to our ancestors on the Indian side, that she had come from the same Indian stock that I had, and my part in the matter has been this, that under those influences and relations that I had with the Sloans on account of my kinship with them, seeing that other people from the Nemaha reservation had lands, that were not here in 1865, I looked on it as a matter of being morally unjust. I did not look at the legal phase of it at that time, and I did not care, and it was through those influences that impelled me to take the stand that I did at these times, not knowing all the legal phases that have come up with reference to these matters.
Q. And it was that interest which you felt for Margaret Sloan that you above described that in a measure prompted your personal feeling toward Miss Fletcher?
A. A good deal of it; there is not only that Mr. Webster. There is my own affairs. It was over partiality with certain families here among the Omahas which I think were not as much entitled to regard from the officials of the Government as even myself. I do not state it as a matter of boast, but as a matter of fact; it was over

partiality with those families to disregard entirely the families that had descended from actual Omaha Indians.

Q. That had reference to the mixed bloods and not as against the full blood Omaha Indians?

A. Yes sir; I want the thing amicably settled, and have the mixed bloods and the full bloods unite in one body, and it would be a benefit to both people, mixed bloods as well as the others. That is one view I take of it.

Q. You were looking at it from a philosophical standpoint?

832 A. Some, I do not know as it cuts any figure.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

833 ALFRED HALLOWELL, whose Indian name is "Nebraska," a witness produced on behalf of the defendants, being first duly sworn deposes and says as follows:

HIRAM CHASE being duly sworn acted as interpreter.

Direct examination by Mr. JOHN L. WEBSTER:

Q. Are you a member of the Omaha tribe of Indians?

A. I am.

Q. How old are you?

A. I am 44.

Q. Have you been a member of the council at any time?

A. This is the second time I have been councilman.

Q. How long are councilmen elected for, or how long do they serve?

A. Three years.

Q. Do you remember when Alice Fletcher was making allotments of lands on the reservation?

A. Yes, I remember it.

Q. Did you know Mary Monette in her life time?

A. Not until a year after; I did not know Mary Monette until after the allotment.

Q. Did you know anything about the council asking Allotting Agent Fletcher to write a letter to Mary Monette to come to the Omaha agency and receive an allotment of lands?

A. He says he has not heard of any such matter.

Q. Was the Indian tribe opposed to those mixed blood claimants in the pending suits having allotments on the Omaha reservation?

A. He says he was opposed to them having land on the reservation ever since Miss Fletcher started in on the allotments.

834 Cross examination.

Questions by Mr. THOMAS L. SLOAN:

Q. Were there objections to the mixed blood family of Louis Neal getting allotments during the Fletcher allotments?

A. He did not hear of that matter.

Q. Were there any objections made to the allotments of Pilcher and his family during the Fletcher allotments?

A. There wasn't much said about the Pilcher family before he got the land. Pilcher has been back long before the allotment, before Miss Fletcher came to the reservation.

Q. Was there any objection made to the allotment of Julia Provo?

A. He says that the common talk was to refuse the mixed bloods, but for some reason Miss Provo got in, he does not know how or in what manner. He says that Mrs. Provo, he understood was Miss Provo, was to have allotment on condition that she alone and not her family should get allotments.

Q. But her family did get allotments, did they not?

A. That is what he understands. He says he has understood that. He says that all the children have—he says he knows of one of the children that has not gotten land that is Garry Myers, Mrs. Provos' son.

Q. The Omahas first objected to Frank Murphy and his family his wife and children getting allotments?

A. He said that the general talk among the Indians with reference to the mixed bloods was to even refuse the Paul family, but by some reason it was generally understood that the Paul family would be let in and the rest shut out; that it was understood that Mary Jane Paul and four of her daughters should get land, but he found afterwards that other branches of the family were taking land, and that is how he explains it.

835 Q. The Neal family had no greater right than the Monette family to allotment on the Omaha reservation, had they?

A. He thinks that he does not know about it, but whatever was done was done by the council, and possibly with the agents, the Government agents. He says he can state a comparison with the Neal case, and that is this, that often times they are told that the children, all the Indian children of white people, while they were excluded, were often times placed back on the rolls. In that way some of the people got on to get the land—got on the list to get the land. He thinks that is the way that Lewis got on.

Q. Mary Murphy had no greater right than Margaret Sloan, had she?

A. He said he thinks that it is based on a common sentiment of the Indians that they shall stop at that point and refuse them.

Q. It was oftener good will or ill-will of the Indians that obtained on the allotments for the persons without any regard to the right, was it?

A. He thinks that the Omahas went on other things, for instance like this; that they thought they would not have enough lands among themselves, and he knows of full blood Omahas *not* that are out of their proportion of lands. He says; another reason was that it was the laying of a precedent for all mixed bloods to come back notwithstanding the fact that they had allotments in the Nemaha country, and they had been provided for once. That was one reason.

Q. Does he claim that they insisted on that rule strictly?

A. Yes sir.

Q. You do not know then that Henry Fontenelle and Louis Saunsoci had allotments down there?

836 A. He said that here was Henry Fontenelle, and Louis had help in their tribe to get them in on the reservation under Miss Fletcher allotments, and at the time of the allotment they had friends, and everything was favorable for them.

Q. Then the allotment was made according to favoritism?

A. Yes sir, favoritism. He thinks that the council chiefs, or what they used to call chiefs then, used to do things without the free will of the Indians, and do things of their own authority in those times; but since there has been no chiefs it has been—there has been more democracy among the Omahas; the people has had their say about those things. That is, the Indians then had some say in regard to common affairs, and how they had come to do these things. The distinction is that among the chiefs, at the time that the Omahas had chiefs, they went right ahead and done things without consulting the people in general*ly*, but since the chiefs were deposed that the tribe—that the body of the people had something to do with their common interests and in seeing what should generally be done.

Q. Then while Miss Fletcher was making the allotments, she and the chiefs did a great many things that the tribe did not learn about until quite a while afterwards?

A. He says there were no chiefs at the time of Miss Fletcher's allotments.

Q. During the time that Miss Fletcher was making the allotments, she and the councilmen did things that they did not learn about until a great while later?

Q. He had not heard that Miss Fletcher had done so and so, that Miss Fletcher and the council had done so and so, in regard to any of these matters.

837 Q. You do not know then that either Louis Neal or his family or any of those folks have been allotted?

A. I do not know; he knows that they have allotments, but through the influence of friends in the tribe, just as he stated before. He did not think that Miss Fletcher done it on her own motion.

Q. And that is true as to all the Paul family?

A. He answers the same. He thinks the matters with reference

to them was properly presented for consent of the people; he don't know, he thought it was properly presented.

Q. Then as a matter of fact he don't know what was done by the council in any of those cases?

A. No, not personally.

Re-direct examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Wasn't Louis Neal living on the reservation when the allotments were made by Allotting Agent Fletcher?

A. Yes, sir.

Q. Was that not true of the Provos?

A. They had been here for a good many years before Miss Fletcher?

Q. Is it not a fact that Miss Fletcher did not allot lands to any Indian except those that were living on the reservation at the time?

A. That is the way he understands it, that she did not allot to those that were not living on the reservation; and those of whom the Indians said they did not know where, that they were doubtful about whether they were really Omahas or not—of Omaha blood.

Q. What was his other answer to that?

A. His other answer to that is that she did not allot to those that were not living on the reservation, and neither to such other
838 persons that applied who the tribe did not have any knowledge as to what Indian blood they were.

Re-cross examination.

Questions by Mr. THOMAS L. SLOAN:

Q. Was the Campbell family living on the reservation at the time Miss Fletcher was making allotments?

A. Mrs. Campbell's history in regard to the allotment is that her mother was a full blood Omaha, who had an allotment on the reservation. When she died Mrs. Campbell came for the purpose of a claim on that allotment, and through that claim she finally got allotment here—allotment under Miss Fletcher.

Q. You are not answering the question whether she was living here during the time of Miss Fletcher's allotments or not?

Mr. SLOAN: I move to strike out the last answer as not responsive.

A. No, she was not living on the reservation, but that the Campbell family had been back and forth off and on among the Omahas, and lived at times among the Omahas with her mother, and often at his father's house; they would go back and forth between here and Nemaha, and live here part of the time and down there part of the time.

Q. Were the Fuller family living on the reservation at the time of her allotment.

A. I do not know very much about that; he says that these names mentioned there, he remembers were about as Mrs. Campbell, were living part of the time on the reservation and then went back to Nemaha, and back and forth.

Q. You never saw the family of Theresa Fuller on the reservation, did you?

A. I saw them there a little beyond the time that Miss Fletcher made the allotments in 1884.

839 Q. Who did you see at that time?

A. I saw her alone. I did not pay much attention to the others.

Q. He never saw her have a house, living on the reservation she and her family?

A. Living in the house?

Q. She and her family?

A. Yes sir.

Q. Whose house?

A. On the south of Charles Baylis' place.

Q. Whose house was it.

A. He did not pay much attention; she was there at the house living there; living there at the house. She may have been visiting there, but he saw her there.

Q. You did not see her husband and the rest of her family, did you?

A. There was quite a number of the family, and he might have *he* saw her there, and there was some children there; he says he did not make any inquiry; he saw some children there, and he supposed they were Theresas'. She speaks Indian.

Q. The same is true of Mrs. Campbell, she visited back and forth with a part of the family until after the Fletcher allotment?

A. He says he would not say that the whole family came up, but on several occasions he knew of Mrs. Campbell coming here to live here, and knew of the fact for the reason that Mr. Campbell in those days had a race horse, kept a race horse, and he saw it, and his father was closely related to Mrs. Campbell's mother, and they visited back and forth while he was here on the reservation. These times they visited there is where he saw them. Mr. and Mrs. Campbell were visiting at his father's house is where he saw them mostly.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

840 I do hereby certify that the above named witnesses, Ellis Blackbird, Charles Robinson, Simeon Hallowell, Hiram Chase and Alfred Hallowell, were first duly sworn to testify the truth, the whole truth and nothing but the truth; that their depositions were reduced to writing in the presence of the witnesses respectively, and

by me typewritten; and that their signatures to said depositions were waived. That said depositions were taken pursuant to the agreement of parties at Pender, Nebraska on the 22nd day of August 1902. That both complainants and defendants were present by counsel at the taking of said depositions.

WM. S. HELLER,
Notary Public.

My fees:

Swearing 5 witnesses	50
62 folios at 20c	12 40
	$12.90

P'd by counsel for defendants.

WM. S. HELLER.

Endorsed: Filed Sep. 3 1902 Geo. H. Thummel, clerk.

841 *Deposition on Behalf of Plaintiff.*

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.

Docket T, No. 364. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at Pender, in the State of Nebraska, on this the 22nd day of August, 1902, the complainants being represented by Thomas L. Sloan, Esq., and the defendants being represented by John L. Webster, Esq.

ANNA CABANA, a witness produced in behalf of the complainants, being first duly sworn, deposes and says as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. State your name?
A. Anna Cabana.
Q. Your age?
A. 60 years.
Q. Where do you reside?
A. Bancroft, Nebraska.

Q. Where were you in June, 1884?
A. At the mission, the Omaha mission.
Q. What is the Omaha mission?
A. A school.
Q. Where is it located?
A. Along the Missouri river.
842 Q. On what Indian reservation?
A. The Omaha reservation.
Q. What were you doing there at that time?
A. I was with Miss Fletcher, helping her.
Q. How long were you with her?
A. I was with her from August of 1883 to September 1884.
Q. Did Miss Fletcher hold any official position at that time?
A. Yes sir.
Q. She was the special allotting agent of the Omaha tribe of Indians
A. Yes sir.
Q. Do you remember a council being held under her direction in June, 1884?
A. Yes sir.
Q. Were you present?
A. Yes sir.
Q. Were there any councilmen of the Omaha tribe of Indians present at that council?
A. Yes sir; there was ten or twelve, or perhaps more.
Q. Do you remember the names of any of them?
A. I remember them, but I cannot speak their names all. There was Prairie Chicken I believe, and Taookah, and Wajapa, and Ebahomba, and Sinta Haha. I cannot remember the names; and there was other witnesses there at the same time.
Q. Was there any business transacted by the council in reference to Mrs. Mary Monette at that time?
A. Yes sir.
Q. State what it was?
A. Miss Fletcher—Frank asked the Indians if there was—who else was out they wanted in, and they said, well, they wanted the half breeds in, and then he got up specially and called this sister. I believe it was his sister; he said she wasn't here, and he
843 wanted her to have land.
Q. What did the council decide?
A. They decided that she should have it.
Q. What was done then?
A. There was a letter written for her.
Q. Who wrote the letter?
A. I think that Mr. La Flesche did.
Q. Who signed it?
A. Miss Fletcher signed it.
Q. What was done with the letter then?

A. They sent it to Mr. Campbell, he was to bring it to her personally.

Q. What did the council direct, what notice should be given in that letter?

A. That she should come right up and have her allotment right away, while the allotment agent was there.

Q. Did it refer to anyone besides herself?

A. It almost said as much; it says, anyone that was coming to come. It did not refer to any other one person, because he was there to represent them.

Q. Did it direct that she, was it directed to her alone, or her and her family?

A. Her and her family.

Q. And do you remember the name of her brother who made this request?

A. I cannot remember his name; I heard it a few times.

Q. Do you remember that it was Wood Tick?

A. Yes sir.

Q. To whom was the letter delivered?

A. Mr. Campbell.

Q. Samuel H. Campbell?

A. Yes sir.

844 Cross-examination.

Questions by JOHN L. WEBSTER:

Q. Mrs. Cabana, was this a regular council meeting of the chiefs or head men of the tribe?

A. Yes sir.

Q. Who called the council meeting?

A. If I mistake not, I think Miss Fletcher called them there to talk things over, and they went in the chapel. I think it was mostly for Mrs. Provo.

Q. Was you in at this council meeting?

A. Yes sir.

Q. What was you doing there?

A. I just went in there to listen, to see what was going on. That is the first one I ever attended, I was there, and I asked her to let me in and she said I could come in.

Q. Did you talk the English language at that time?

A. Well, I always talked the English language; I never talked any other but French.

Q. You do not talk the Indian language?

A. No, but just a few words; I understand a few words.

Q. You are a white woman?

A. Yes sir.

Q. Full blooded?

A. Yes sir.

Q. Your language is the English language and the French language?

A. Yes sir.

Q. And this council meeting that you say you attended was a council of the Omaha Indians?

A. Yes sir.

Q. And that council was held in the Indian language?

A. Partly; it was interpreted every word in English. Mr. Frank La Flesche interpreted to Miss Fletcher, because she could
845 not understand the Indian language, and so I had a chance to hear what was said.

Q. Do you know this man Wood Tick you spoke of, do you know him personally?

A. No, I do not.

Q. Did you know him at that time?

A. No sir, that was the first time I had ever seen him.

Q. Do you know where he came from?

A. He lived right in the tribe, amongst them.

Q. And he wanted his sister, Mrs. Monette?

A. To come and get her land, and her family.

Q. Do you know that Mrs. Monette was a sister of Wood Tick?

A. That is what they said; I did not personally know.

Q. When was she to come here?

A. Yes, she was to come as quick as she could, right away, as quick as she could, but she did not come, and I suppose it was left that way.

Q. Was that one of the conditions of her receiving an allotment, that she should come immediately?

A. She should come right away and take it.

Q. If she was to have an allotment she was to come immediately for it, was that the way you understood it?

A. I understood her title was good, and she should come and get it; I suppose, it did not say any time.

Q. I am trying to get at what actually happened?

A. That is what actually happened then.

Q. Now, can you remember just what was said about it by any one?

A. Yes. I heard Miss Fletcher talk about it, and he talked in Indian to them, and Frank interpreted it to her in English, and said that he wanted his sister to come up and get her land, and then he says, well, he says, she should come right away and get it.

846 Q. That is Wood Tick that said that?

A. No, this is what was interpreted.

Q. What the interpreter said?

A. Yes, sir.

Q. If I understand you, the interpreter said that Wood Tick wanted his sister to have an allotment?

A. Yes, sir.

Q. And wanted her to come immediately and get it?

A. No, I do not know that he said immediately; he wanted her to have the allotment, and that he was there for to speak in her behalf; that is the way I understood it; the way it was interpreted.

Q. Now, you did not hear anyone say anything then that you understood about it except what Frank La Flesche said to Miss Fletcher

A. Yes, sir.

Q. Did you see that letter when it was written?

A. No sir, I seen them write it, but I did not read it.

Q. You did not read it?

A. No sir.

Q. You do not know what was in the letter?

A. No sir.

Q. Miss Fletcher concluded her allotments under the act of 1882 before Mrs. Monette came, did she not?

A. Yes, sir, she did not come there until 1883.

Q. She did not come until 1883?

A. Miss Fletcher.

Q. She finished her allotments and went away when?

A. 1884, in June.

Q. And Mrs. Monette did not come to the reservation until 1890, some six years after Miss Fletcher had gone away, is that correct?

A. I do not know; I think there was someone here between that time, and before to see about it, but I do not know what time she came.

847 Q. You do not know when Mrs. Monette did come up?

A. No sir, not exactly.

Q. You do not know that?

A. No sir.

Q. The fact is she did not come until after Miss Fletcher had concluded her work and had gone away?

A. Yes sir, I think there were other allotments made afterwards, and I do not see why others could not have been too.

Q. There was no allotting agent at the reservation under the act of 1882 after Miss Fletcher went away, was there?

A. I think there was some more allotments went on after she came down. I am not certain. I think I could look it up.

Q. Do you know of any allotting agent being at the reservation after Miss Fletcher had concluded her work and went away, do you remember?

A. No sir, not until this last one.

Q. Not until Colonel Rankin came to make allotments in the year 1893?

A. Yes sir.

Q. The fact is, there was no allotting agent on the reservation to make any allotments under the act of 1882 after Miss Fletcher left?

A. No, I do not think there was any here, but I think there was some allotting done.

Re-direct examination.

Questions by Mr. T. L. SLOAN:

Q. Miss Fletcher was the official allotting agent with whom the Indians held the council at which you were present, was she?
A. Yes sir.
Q. That part of the business transacted by the council was communicated to her through an interpreter?
A. Yes sir.
Q. And by the interpreter interpreted from the Indian language into the English language?
A. Yes sir.
848 Q. You had the same opportunity of hearing and understanding that as she did?
A. Yes sir.

Witness excused.
By consent of the parties hereto the signature of the witness to the above deposition is waived.

Mrs. EMILY CAMPBELL, a witness produced in behalf of the complainant, being first duly sworn, deposes and says, as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Your name is Emily Campbell?
A. Yes sir.
Q. About how old are you?
A. I am 58, I think.
Q. Do you live on the Omaha reservation at the present time?
A. Yes sir.
Q. Have you an allotment of land?
A. Yes sir.
Q. And are recognized as an Omaha Indian?
A. Yes sir.
Q. Did you know Mary Monette in her life time?
A. Yes sir.
Q. Do you recollect her during her life time?
A. Ever since I can remember I think.
Q. One of your childhood acquaintances?
A. Yes sir.
Q. Did you go to school with her?
A. Yes sir.
Q. At what school?
A. At the Omaha mission school.
Q. Was that at Bellevue?
A. Yes sir.
Q. Was that school for the Omaha Indian children?
A. Yes sir.

Q. Did you know Mary Monette's mother?
A. Yes sir.
849 Q. What was her name?
A. La-ta-da-we.
Q. She was a full blood Omaha Indian woman?
A. Yes sir.
Q. By what name was Mary Monette known at the mission school?
A. Mary Bono.
Q. Did Mary Monette have a home or residence on the Nemaha reservation?
A. Yes sir.
Q. Did you know where her home was?
A. It was in Nemaha county, I think, Nebraska.
Q. When did you first go down to the Nemaha reservation?
A. In 1858, I think.
Q. Did you have an allotment of land down there?
A. Sir?
Q. Did you have an allotment down there?
A. Yes sir.
Q. Did you know Margaret Slown down there?
A. Yes sir.
Q. Did you make any trips from that reservation to the present reservation with Margaret Sloan?
A. Yes sir; that was before we went down there though.
Q. Did Margaret Sloan and your mother make any such trips?
A. Yes sir.
Q. What was the purpose of those trips that you made?
A. It was for their annuity money.
Q. Did the Indians visit your family on the Nemaha reservation?
A. Yes sir.
Q. Did they visit Margaret Sloan?
A. Yes sir.
Q. Were Margaret Sloan and your mother related?
A. Yes sir, they were distant relatives.
Q. They were related through the Indian blood?
A. Yes sir.
850 Q. When did you move up to the reservation where you now live?
A. When?
Q. What year, if you remember?
A. It must have been about 17 years ago.
Q. About 1884 or 1885?
A. Yes sir.
Q. And where had your residence or home been during the time from 1856 until 1884 or 1885?
A. It was in Council Bluffs, Iowa.
Q. That was before 1856 that you lived there?
A. Yes sir; I lived there a while.

Q. From the time that you left there until you came back to where you now live, where was your home?

A. In Richardson.

Q. Was that the Nemaha reservation?

A. Yes sir.

Q. Did you draw any annuity moneys while you were living down there?

A. My mother did.

Q. And there was a while after your mother's death, after you moved up here that you did not get any?

A. No sir.

Q. After you moved up in 1884 or 1885 you and your family were all enrolled?

A. Yes sir.

Q. That included your children and grand-children, did it?

A. Yes sir.

Q. Your husband is a white man, is he?

A. Yes sir.

Q. And your children your daughters are married to white men, and their children are all married?

A. Yes sir.

Q. Did you know Mary Monette after she moved up to the present reservation up here, while she lived on the Fontenelle land?

A. Yes sir.

Q. Did you make a trip with her from where you live out here down among the Indians on a visit?

A. Yes sir.

851 Q. Did you, during that trip, you and Mrs. Monette call on Alfred Hallowell, or Nebraska?

A. Yes sir.

Q. Did you and Mrs. Monette talk with him during that trip down there?

A. Yes sir.

Q. Was there anything said by Mrs. Monette to Alfred Hallowell in regard to the purchase or sale of his claim to some land out here?

A. It seems to me that they were talking about it.

Q. You do not recollect any of the special circumstances?

A. No sir.

Q. Mary Monette spoke the Indian language?

A. Yes sir.

Q. You speak it and understand it?

A. Yes sir.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Mrs. Campbell can you state what Hallowell did say?

A. No sir, I do not remember what they did say; we went down there on Sunday and I forget.

Q. When was it that you and Mary Monette attended school at Bellevue?

A. I was young; I do not know how old, I do not remember the year or nothing; I was young. I could not have been more than eight years old, and maybe not that old when I was attending school.

Q. How old are you now?

A. I am 58.

Q. From Bellevue Mrs. Monette went to the Nemaha reservation?

A. The Indians used to live down there. That was before they moved up here. They had a school there, and there is where we all went.

Q. Did Mary Monette go from that place at Bellevue down
852 to the Nemaha reservation?

A. No sir; she was up here.

Q. When did she go to the Nemaha reservation?

A. She started from this reservation down there; she came up with the Indians.

Q. I ask you when it was that she went to the Nemaha reservation?

A. It must have been in—from Bellevue.

Q. When?

A. I do not know when she left school. I was not with her then. I left school before she did.

Q. So far as you know then when she quit school she went to the Nemaha reservation?

A. Yes, sir.

Q. Well then that must have been about 50 years ago?

A. Yes, sir.

Q. Then she did not move on the Omaha Indian reservation until the year 1890, or about that time about 12 years ago?

A. Yes sir.

Q. When was the time that you think that Mary Monette came to the Omaha Indian agency to get annuity, was it about 1862?

A. I do not know more than—the last time I guess after she went down, she came up—let us see; it must have been about 22 or 23 years ago the time she came up with us, and she had not been up since until she came up.

Q. Did you come up with her at the time?

A. We came up here once.

Q. Once?

A. We came up together once on account of a visit, and to see about our rights.

Q. How long did Mary Monette stay up here at that time?

A. We did not stay any; we had our families down there; we came up on a visit; we went back in a couple of weeks.

853 Q. How long was that before you moved up on the reservation?

A. I do not remember how long it is. I have been here 17 years.

Q. How close do you live to the town of Pender?
A. About a mile, or a little over a mile.
Q. Is that on reservation land?
A. Yes sir.
Q. Your husband is Samuel H. Campbell?
A. Yes sir.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

MITCHELL MONETTE, a witness produced in behalf of the complainants, being first duly sworn, deposes and says as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. You were living with your mother in 1892 on the Omaha reservation?
A. Yes sir.
Q. Do you know "Nebraska" or Alfred Hallowell?
A. Yes sir.
Q. Was he a visitor at your house?
A. Yes sir.
Q. About what time?
A. It was sometime in April 1892, I do not remember just the date.
Q. How long did he stay there?
A. He was there some two or three days, I could not say exactly.
Q. Did he remain there at night?
A. Yes sir.
Q. Did he and your mother talk together during that time?
A. Yes sir, they talked considerable together.
Q. Was there any discussion in regard to any of the land also made at that time?
854 A. Not as I understood their talk, but what she told me, that she had a talk with Nebraska for a quarter section of land that he had marked.

Mr. WEBSTER: The defendants object to the foregoing answer, and to any further testimony of this witness on that point; for the reason that it is hearsay.

Q. Was there any money or anything paid to Nebraska at that time?
A. Well, there was some paid to him, but I could not say whether it was on that deal or not. They were talking over it a good deal. I cannot understand much of it myself.
Q. Was there any part of the conversation in respect to the land which you from the talk yourself understood was a conversation relating to that particular land?

A. Just by the motions that he made, and pointing of it.
Cross examination waived.
Witness excused.
By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witnesses, Anna Cabana, Emily Campbell and Mitchell Monette, were first duly sworn to testify the truth, the whole truth and nothing but the truth, that their depositions were reduced to writing in the presence of the witnesses respectively, and by me type-written, and that their signatures to said depositions were expressly waived. That said depositions were taken pursuant to the agreement of parties at Pender, Nebraska, on the 22nd day of August, 1902, that both complainants and defendants were present by counsel at the taking of said depositions.

WM. S. HELLER.

My fees:

Swearing 3 witnesses	.30
36 folios at 20c	7.20
	$7.50

P'd by counsel for pl'ffs.
WM. S. HELLER.

Endorsed: Filed Sep. 3 1902, Geo. H. Thummel, clerk.

855 Thereupon afterwards, to-wit: on the said 3rd day of September, 1903, stipulation of evidence was filed in said case, which said stipulation is in words and figures following to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, JENNIE M. Arnold, and Cassie M. Karch, Complainants, vs. THE UNITED STATES OF AMERICA, CHARLES P. Mathweson, and Alfred Hallowell, Defendants.	Docket T, No. 364. Stipulation of Evidence.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the fact set down after their names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Alfred Hallowell will testify that he is a member of the Omaha tribe of Indians and of the full blood; that he is the same Alfred Hallowell who has heretofore made a statement herein, and is the father of Silas Hallowell and William Hallowell. That he has been a member of the council of the Omaha tribe of Indians, and that his term as councilman expired during the spring of 1902.

He will further testify that there has been read to him the statement of Mitchell Monette to the point that in the year 1892 Mary Monette made a contract with Alfred Hallowell to buy out
856 Hallowell's right to the lands allotted to Silas Hallowell and William Hallowell for the sum of $50.00; and that the said Alfred Hallowell states that he never had any such agreement with Mary Monette. That at one time Samuel Campbell came to the witness and said that he, the said Campbell, had a horse which he would be willing to give to the said Alfred Hallowell for a release of the said land, but he, the said Alfred Hallowell, declined to accept the said horse and declined to release the said land.

The said Alfred Hallowell will further testify that Mary Monette never paid him any money or other consideration for the release of the said land; that he knew Mary Monette and saw her several times, but never had any conversation with Mary Monette on the subject whatever.

The witness will further testify that Mary Monette died in 1893, and that the witness never had any conversation with Mitchell Monette on the subject of releasing the lands.

And the witness will further testify that Mitchell Monette talks the English language, and does not talk the Indian language, and that this witness, Alfred Hallowell, talks the Indian language, but does not talk the English language, and could not therefore have any conversation with Mitchell Monette.

The witness Alfred Hallowell will further testify, that he is so informed, that Cassie M. Karch talks the English language, and does not talk the Omaha Indian language, and will further testify that he never had any conversation with Cassie M. Karch on the subject of releasing the said lands, and does not personally know Cassie M. Karch, and would not know her if he saw her.

The said Alfred Hallowell will further testify that he never saw Mary Monette but once, and that was when she was over at the house of this witness, and that at said time he did not
857 have any talk with her about selling the land, and did not make any statement to her that he and Simeon had marked and claimed more land than they were entitled to, and that he did not make any such statement to Cassie M. Karch and does not know her personally, and never saw her.

Alfred Hallowell will further testify that at the time of the giving of this testimony is the first time that he ever heard of the claim that he had agreed to sell his right to the said lands to Mary Monette.

William F. Springer will testify for the defendants that he is a member of the Omaha tribe of Indians, and was the interpreter for Allotting Agent Rankin during the time when Rankin was making the allotments under the act of 1893; and that he was present with Rankin during the interviews with the Indian claimants for allotments, and that the Monettes did not make any claim or statement to Rankin, the allotting agent in his presence or hearing that they had purchased the Hallowell ground; and that he never heard of this claim of the Monettes of the purchase of the Hallowell claim until the taking of this testimony.

The witness will further testify that Allotting Agent Rankin, accompanied by the said witness as interpreter, went to the home of Mitchell Monette, John Kuhn, Frank Peters, Lot Sailors, William Barada for the purpose of getting the names and ages of the children, so that if it was determined that they were entitled to allotments that they might receive allotments as other Indian children. They gave in the names and ages of the children. One or two of the families said that Thomas L. Sloan had the description of the lands that they claimed, but they did not give to the allotting agent any description of any lands to which they made claim; that they
858 saw Mitchell Monette and he did not make any claim to Agent Rankin to the land allotted to Silas Hallowell and William Hallowell described in this case and did not furnish any description of the lands claimed by the Monette family.

Alfred Hallowell being recalled for the defendants, states, in explanation of the testimony of Samuel H. Campbell, heretofore taken, that the lands staked around by Samuel H. Campbell for this witness under his employment was 80 acres, and that the amount broken was not 40 acres, but about 10 acres, and that he, Alfred Hallowell, paid Samuel Campbell $25.00 for the breaking of the said 10 acres.

JNO. L. WEBSTER,
Att'y for Def'ts.
THOMAS L. SLOAN,
CHARLES E. CLAPP,
Att'ys for Complainants.

Endorsed: Filed Sep. 3 1902 Geo. H. Thummel, clerk.

859 Thereupon afterwards, to-wit:—on the 19th day of September, 1902, depositions for complainants were filed in said case, which said depositions are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.

Docket T, No. 364. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 10th day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendants being represented by John L. Webster, Esq.

WILLIAM PROVO, produced as a witness in behalf of the complainants and after being first duly sworn on his oath deposes and says as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Where do you live?
A. I live in Lyons, in Burt county.
Q. How long have you lived there?
A. A little over two years.
Q. When did you first come to that part of the State of
860 Nebraska where you now live; when did you first come up there, what year?
A. When I came on the Omaha reservation, in the fall of 1875.
Q. Where did you come from?
A. From Nemaha county.
Q. Had you been living on that part that was known as the Nemaha reservation prior to that time, to your coming to the Omaha reservation?
A. Well, I just got married you know and I moved up and lived there one year.
Q. Was your wife an allottee of land on that reservation, did she have an allotment of land on the Nemaha reservation?
A. Down there?
Q. Yes sir.
A. Yes sir.
Q. How many children did your wife have when you removed to the present Omaha reservation?

A. We had three.
Q. How many children have you now?
A. Well, my own children, I have seven.
Q. How many children are there living from previous marriages?
A. Two.
Q. Are all of those children borne upon the tribal annuity rolls of the Omaha tribe of Indians?
A. That is, mine are.
Q. The others are also, are they not?
A. The oldest one was.
Q. All of the children are on the annuity rolls, are they?
A. Yes sir.
Q. Have all of the children allotments of land?
A. Yes sir.
Q. Where were the two oldest of the children born?
861 A. Two of the oldest, they were born down in Nemaha county.
Q. On the Nemaha reservation?
A. They are Josephine Barnaby and Garry Myers.
Q. At the time that you and your wife and family removed to the Omaha reservation were any of them borne upon the tribal annuity rolls of the Omaha tribe of Indians, at the time that you came up, or before that, were any of the family borne upon the annuity rolls, or were they put on after you got up there?
A. Josephine was on the roll.
Q. Who with?
A. Her grand mother.
Q. Was Garry Myers on the roll prior to that?
A. No sir.
Q. Was your wife on the roll at that time when you came up?
A. No, I do not think she was.
Q. How long after you removed to the Omaha reservation were you placed upon the annuity rolls?
A. I do not recollect now the year. It was when Colonel Edwards was agent.
Q. That was soon after you went to the reservation?
A. There was Gillingham Jacob Vore and then came Colonel Rankin, and Colonel Edwards.
Q. Two years afterwards was it?
A. Yes sir.
Q. Were you living on the reservation when Miss Fletcher was making allotments?
A. Yes sir.
Q. Did your children at that time receive allotments?
A. No sir.
Q. When did they receive allotments?
A. They received allotments under Colonel Rankin.
Q. That was within the last three years?
A. Yes sir.

Q. Were you present at a council at the Omaha mission where the claims of your wife and family were considered by Miss Fletcher?

A. Yes sir.

862 Q. Do you remember what year that was?

A. I think it was 1884.

Q. What was your business there at that council if you recollect?

A. I do not know what it was for; we were called to the council by Miss Fletcher.

Q. State what occurred there?

A. She claimed that the council was for to decide if she would allot my children or not.

Q. Did you hear the decision of the council at that time?

A. Yes sir.

Q. State what it was?

A. She asked the Indians, that is, the council, if she was going to allot—if she would allot my children, and they got up, one at a time, and told her that we have told you to allot those children, and we are not going to tell you any more; that is the very words they said to her; they says, you can do as you mind to, we have told you enough; we want them to have their allotment; they are born here, and they are raised here, and those are the very words they said.

Q. Did they receive an allotment from Miss Fletcher?

A. No sir.

Q. Do you know Wood Tick?

A. Yes sir.

Q. Was he there at that council?

A. Yes sir.

Q. Did he have anything to say at that council?

A. Well, after they got through with us, he got up and spoke about his sister that he had down in Nemaha.

Q. Who was his si-ter, if you know?

A. Mary Monette.

Q. What was said and done in regard to her?

863 A. Why, he got up and asked the Indians and Miss Fletcher that he wanted land for his sister.

Q. Was anything said by any of the council?

A. They were willing for her to draw her land, and also they told Miss Fletcher to allot her.

Q. Was there anything said about sending word to Mrs. Monette at that time?

A. I do not recollect that point.

Q. Do you know whether there was a letter written at that time or not?

A. No, I do not.

Q. How long did you draw annuity money from the Omaha tribe?

A. I think I drawed it from the time that Edwards was agent up to Ashley's time; that was about——

Q. It was about twelve years?
A. Yes, sir.
Q. How was your name taken off of the roll, if you know?
A. It was taken off by the council that we had there.
Q. By the council, or agent, which do you know?
A. It was the council by the agent.
Q. How did they do it, just drop your name?
A. No, they wanted to put some more on the roll, and the Indians did not want to put them on, and finally they concluded that they would not put them on the roll. They had about four—three of us in the roll at one time, and Mr. Fontenelle wanted to put on his son-in-law on the roll, a La Flesche, at that council; they had a special council for them at that time, and I told Mr. Wilkinson that I did not want—I told him that I did not want to have any trouble with them, or for them to put any more on the roll because I was on the roll, and that I would withdraw my name off of the roll and stop their putting any white men on the roll.
Q. What Indian blood are you?
A. I am half breed.
864 Q. What tribe?
A. Ogallala and Sioux.
Q. You have no Indian blood at all?
A. No sir.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. What relation are you to the Monettes?
A. No relation at all.
Q. Is your wife related to the Monettes?
A. No.
Q. What relation was your wife, or yourself to the Sloans and Mary Jane Paul?
A. Well, Mary Jane Paul was my wife's aunt.
Q. And Mary Jane Paul was a sister of Margaret Sloan?
A. Yes sir, and Antoine Barada is her brother.
Mr. CLAPP: Mrs. Provo's father?
A. Yes sir. There is another Antoine Barada, the one down on the Iowas.
Q. How long have you been living at Lyons?
A. A little over two years.
Q. Then did you live on the Omaha reservation from 1875 up to the time when you moved to Lyons?
A. No, I moved out West, out to Pine Ridge reservation and was out there four years, then I moved back, I went out there to establish my own rights.
Q. On the Sioux reservation?
A. Yes sir.

Q. And you draw your annuities on the Sioux reservation?
A. Yes sir.
Q. Does your family draw any annuities on the Sioux reservation?
A. No sir.
Q. Do all of your family draw annuities on the Omaha reservation?
A. Yes sir.
865 Q. Have any part of the Sioux lands been allotted to you, or do you lay claim to any part of them?
A. We hold all our land yet in common. We have not been allotted.
Q. Have you made a selection on the Sioux reservation?
A. Yes sir.
Q. Of how much?
A. 320 acres.
Q. Under whose advise did you go out there to do that?
A. Under the agent.
Q. What agent?
A. Captain Penney.
Q. Do you mean that he came down to the Omaha reservation to tell you to go out there and make that selection?
A. No. I made my effort in Pine Ridge agency the winter of 1892. I went out there and looked up my tribe relation. I did not know where I belonged at the time, that is, really to know where I did belong, and I went to the Pine Ridge, the first agency.
Q. Was your father an Indian?
A. No sir.
Q. A white man?
A. Yes sir.
Q. And you say you are a half blood Sioux?
A. Yes sir.
Q. So you get your Sioux blood from your mother?
A. Yes sir.
Q. She was a full blood Sioux?
A. Yes sir.
Q. Are you sure of that?
A. Yes sir. You take the Sioux Indian and they are fairer than I am.
Q. When was council meeting that you say that you attended?
A. At the mission.
Q. I do not know where it was?
A. At the mission is where I was called. We were called there by Miss Fletcher, that she was holding a special council before she left about my children's allotment.
Q. The result of that was that your children did not get
866 an allotment?
A. She would not allot them.

Q. The fact is that you did not get the allotment?
A. We did not get it.

Re-direct examination.

Questions by Mr. THOMAS L. SLOAN:

Q. After the allotting agents were changed your children were allotted, were they not?
A. Yes sir.

By Mr. WEBSTER:

Q. When you speak of the change of the allotting agents, is it not a fact Mr. Provo, that there never was any change of the allotting agent under the act of 1882?
A. Well, I know my children got allotment under the last one.
Q. What do you mean by the last one?
A. The last allotting agent.
Q. Who?
A. Colonel Rankin.
Q. That was under the act of 1893, was it not?
A. Yes sir.
Q. And under the act of 1882 there never was any allotting agent but Alice C. Fletcher?
A. That was all.
Q. So that there was no change of allotting agent under the law of 1882, was there?
A. No.
Q. And the fact is, your children never got any allotments under the act of 1882, is that not so?
A. They should have been allotted.
Q. They were allotted under the act of 1893?
A. Yes sir.
Q. But never under the act of 1882?
A. No sir.

Witness excused.

By consent of the parties hereto signature of the witness to the above deposition is hereby waived.

867 JULIA PROVO, produced as a witness in behalf of the complainants, and after being first duly sworn on her oath, testified as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Are you the daughter of Antoine Barada?
A. Yes, sir.
Q. Were you an allottee of lands upon the Nemaha reservation?

A. Yes sir.
Q. How many acres did you get there?
A. 325 acres.
Q. When did you first live on the Nemaha half breed tract?
A. When did we first go there?
Q. Yes?
A. I could not tell you the year. I was a child only ten years old when we came from St. Louis.
Q. In 1857?
A. Yes sir.
Q. You came there with your father?
A. Yes sir.
Q. Were you married there?
A. Yes sir.
Q. To whom?
A. I was married in Rockford to William Barnaby.
Q. Was he of Indian blood?
A. Yes sir, he was a half breed of the Omaha Indian nation.
Q. What became of Mr. Barnaby?
A. He died in 1866 or 1867 I do not remember.
Q. It was after the war?
A. Yes sir.
Q. He had been a soldier?
A. Yes sir.
Q. Your daughter Josephine, where was she born?
A. She was born in Nemaha county.
Q. On the Nemaha reservation?
A. Yes sir.
Q. Is Garry Myers here, your son?
A. Yes sir.
Q. Where was he born?
A. In Richardson county.
Q. Was his father a white man or an Indian?
A. A white man.
868 Q. When did you, with your children remove to the Omaha reservation?
A. We moved to the Omaha reservation when Garry was a small boy; I cannot remember, I do not remember the date.
Q. About 1875?
A. Yes, along there.
Q. How long after you reached the reservation before you and your family were placed on the annuity rolls?
A. We came here in the fall and before spring we were placed on the roll.
Q. Was there any question about your being enrolled?
A. No sir.
Q. What did the Indians say about it?
A. My mother in law took me up there and had me and my children put on the roll; they were willing. The little girl had

been on the roll, and myself since the time I married Barnaby, and she was drawing our payment all along. When I came here to live, they says, here is your mother, you and your children, and we will have the rest put on the roll. This little fellow (indicating) was then put on the roll. They were willing to put them on. We had no trouble at all.

Q. Were you living on the reservation when Miss Fletcher made the allotments?

A. Yes sir.

Q. Did you receive an allotment?

A. For myself and my daughter.

Q. Your oldest child?

A. Yes sir.

Q. Josephine Barnaby?

A. Yes sir.

Q. How old was your son Garry at that time?

A. He was going on 11 years at that time.

Q. Did he receive an allotment then?

A. No sir, we had at that time, we had William and two other daughters; Louise and Margaret.

Q. You had four children that did not receive an allotment?

A. Yes sir.

869 Q. You claimed land for them at that time?

A. Yes sir; we had the land picked out; the agent told us to pick out the land; the Indians told us.

Q. Miss Fletcher refused to allot them?

A. Yes sir, she got angry at me because I would not ler my daughter go with her and camp around; it was because she was mad at me, is all.

Q. Were you present at a council, at the council mission where the claims of your children and yourself were considered?

A. Yes sir, it was at a council that she had called us to meet the Indians; the Indians had always told her to give my children land and allot them, and in that council she asked them again, and they said, we told you what to do, and you do as you please; and we thought our children were allotted all the time until after she was gone. We did not think she would be so wicked as to leave us out.

Q. Your children had since received allotments from Colonel Rankin?

A. Yes sir.

Q. Do you know Wood Tick?

A. Yes sir.

Q. Was he present at that council that you were called to?

A. Yes sir, he was there.

Q. Do you remember anything that was said or done at that time?

A. Yes, sir, he came up and said that he wanted his sister here, he wanted her to have land, and he raised both hands and he motioned that way (indicating).

Q. Who was his sister?

A. Mrs. Monette.
Q. Was anything done in regard to it?
A. There was a letter written by Mr. La Flesch, Miss Fletcher signed it; it was to be sent to Mrs. Monett.
Q. To whom was that letter given?
A. I cannot tell that, because we left there quite early, be-
870 fore the council was out. There business was not finished yet; I do not know in whose hands the letter was sent.
Q. You are well acquainted with Mrs. Campbell, are you?
A. Yes sir.
Q. Her family and children?
A. Yes sir.
Q. When did they first remove to the present Omaha reservation?
A. It was some two years after this council I think they moved to the Omaha reservation.
Q. It was about 1885?
A. It must have been about that time.
Q. Were any of Mrs. Campbell's children born on the present reservation?
A. Yes sir.
Q. Whereabouts were they born?
A. In Richardson county.
Q. Was that on the tract known as the half-breed reservation?
A. Yes sir.
Q. Do you know Teresa Fuller?
A. Yes sir.
Q. Are you related to her?
A. She is my cousin.
Q. Did you live in the same neighborhood she did on the Nemaha reservation?
A. Yes sir.
Q. Were any of her children born on the present Omaha reservation?
A. No sir, they were all born in Richardson county.
Q. Was her husband a white man or an Indian?
A. He is an Englishman. He is a white man.
Q. And he was the father of all her children?
A. Yes sir.
Q. Do you know Madeline Scott?
A. Yes sir.
Q. Where did you first know her?
A. In Richardson county. We were all small there together; grew up there together.
Q. Who removed to the present Omaha reservation first, you or Mrs. Scott?
A. I did.
Q. Do you know her two children George and Wesley?
A. Yes, sir.

871 Q. Where were they born?
A. In Richardson county.
Q. Was the husband of Mrs. Scott a white man?
A. Yes sir.
Q. He was the father of the two boys named?
A. Yes sir.
Q. Was John Pilcher living on the reservation when you came to it?
A. No sir, he was living on the homestead on the Logan Valley.
Q. How many of his children were born on the reservation, if you know?
A. I think the two last ones were born on the reservation.
Q. How many children has he?
A. I could not tell you.
Q. You had better name them over. Josephine was the oldest one?
A. Yes sir.
Q. And Charlie next, and Minnie, and Grace then Ada, then Millie and Jennie and William?
A. Yes sir.
Q. All of those children, except the last two named were born off of the reservation?
A. Yes sir.
Q. Did Mr. Pilcher have any trouble about having an allotment on the reservation?
A. He had some trouble, because he became a citizen and had gone away from the nation; he had some trouble to get on, but finally got on.
Q. Do you know his wife?
A. Yes sir.
Q. Is she a white woman or an Indian?
A. She is a white woman.
Q. Is she enrolled?
A. Yes sir.
Q. Has she allotment land
A. Yes sir, Mr. Rankin allotted her.
872 Q. Do you know Josephine Lamson?
A. Yes sir.
Q. What was her husband, a white man or an Indian?
A. A white man.
Q. How many children did they have?
A. Within the late years I have not associated with them much. I could not tell you how much of a family they have.
Q. 8 or 9?
A. I suppose so.
Q. Are they enrolled and receive annuities as members of the tribe?
A. Yes sir; they receive annuity and land.
Q. What degree of Indian blood are they?

A. Mrs. Lamson herself was only quarter, Mr. John Pilcher was quarter.

Q. And Josephine was how much?

A. I could not tell you.

Q. One-eighth was she?

A. I could not tell you.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Mrs. Provo you are a relative of the Sloans and the Baradas?

A. Yes sir.

Q. Your father was who?

A. Antoine Barada.

Q. Was he an uncle of Thomas L. Sloan?

A. Yes sir.

Q. And what relation are you to Thomas L. Sloan?

A. Thomas L. Sloan would be—your father (pointing to Thomas L. Sloan) was father's nephew. What would you call yourself to my father.?

Mr. SLOAN: I would call him grand uncle.

A. His grand mother was my aunt.

Q. When did you go up to the Omaha reservation?

A. I went in the early days; I stated before.

Q. When?

A. The first year we lived on the Omaha reservation was in
873 1853; I have been on the roll ever since. I have been on the roll ever since I was a small child. My father used to draw his annuity up here, and he traveled up and down; we went up and got our moneys.

Q. You personally have been on the roll since 1853?

A. I have been on the roll since I was a small child you may say; I do not think I was ever took off of the roll when I got married to my first husband.

Q. How old are you now?

A. 58.

Q. You do not mean that you lived on the Omaha reservation since 1853 all the time?

A. We lived here a couple years, me and my first husband, and went back to Richardson county, and then when we married we came up here.

Q. You and Barnaby?

A. Yes sir.

Q. Did you and Barnaby live on the Omaha reservation?

A. Yes sir.

Q. When was that?

A. That was in 1853.

Q. In 1853?

A. I mean in 1863. I did not keep the time in my head.

Q. So you lived on the Omaha reservation with Barnaby in 1863 for how long?

A. We were here about a year and a half.

Q. To 1865, then where did you go to?

A. We went down to Richardson. We had a home down there.

Q. You were on the rolls of the Omaha tribe in 1863 or 1864 and 1865 with Barnaby your husband?

A. Yes sir.

Q. And was your husband's name on the tribal rolls at that time?

A. Yes sir.

Q. So you regarded that both Barnaby and yourself were members of the Omaha tribe in 1863, 1864 and 1865?

A. Yes sir.

874 Q. When Miss Fletcher was allotting agent she allotted lands to you, did she?

A. Yes sir.

Q. And she allotted lands to the children of your husband Barnaby?

A. Yes sir.

Q. Now, her refusal to allot land was to the children of Provo?

A. I do not know what her idea was.

Q. I am asking for the fact. I am not talking about ideas. The children to whom she did not make allotments were the children of Provo?

A. Yes sir.

Q. Of your last husband?

A. Yes sir.

Q. Who was a Sioux Indian?

A. Yes sir.

Q. Now, who was your second husband?

A. His name was Myers.

Q. Now Mrs. Provo, about the Monett matter, was you a member of the council of the Omaha Indians at the time when this council was held that you speak of at the mission in 1884?

A. Yes sir.

Q. You was a member of the council?

A. Yes sir.

Q. And that council is made up of what?

A. I meant I was a member of the tribe.

Q. So you are mistaken then, are you, when you said a moment ago that you were a member of the council of the Indians in 1884?

A. Yes sir, I am mistaken.

Q. You was not a member of the council?

A. No sir, they sent for us to come there.

Q. So if you was not a member of the council you did not have a right to participate in the proceedings of the council?

Mr. SLOAN: Objected to as calling for a conclusion of the witness.

875 A. The council got up on behalf of ourselves, for the Indians told her more than once to put our children on the roll, and she had not done it, and she called us up a third time, and that is what we were there for.

Q. Will you be kind enough to answer the question that I asked you?

A. What question did you ask?

Q. I asked you whether you had any right to participate in the proceedings of the council?

A. No, only what I was asked to answer. If they would ask me to answer anything I would have a right to answer anything at that time.

Q. So then as a matter of fact you did not take any part in the action of the council?

A. I had no right to take a part only if I was asked. I was sent there to witness whether she would put my children on or not.

Q. All that was asked of you were certain facts as to your tribal relation?

A. I had been asked that long before then.

Q. I do not care of you was asked it a thousand times; will you answer my question; was you asked those questions at that council meeting?

A. No, we were not asked that question.

Q. Then what was you asked at that council meeting?

A. We were not asked anything.

Q. Were you asked anything, did any Indian ask you anything at that council meeting?

A. No, they did not ask me anything.

Q. If they did not ask you anything you had nothing to answer to that council, had you?

A. No, sir; we were sent for is all, sent for to listen.

876 Q. Now, who was the interpreter at that time?

A. Frank La Flesche.

Q. And the allotting agent was who?

A. Miss Fletcher.

Q. Who were the members of the council at that time?

A. I remember of just several; I do not remember all the councilmen. There was Sinta Haha for one; and Eberhambe; and Duba Monie; and White Horse, is all I remember.

Q. Was Sinta Haha there?

A. Yes sir, I said Sinta Haha.

Q. Mrs. Provo, are those all that you can name?

A. That is all I remember of their names; there was more than that there; they always had twelve councilmen.

Q. Do you say Mrs. Provo that these persons that you have named were present at that council meeting?

A. Yes sir.

Q. Sinta Haha was there?

A. Yes sir.

Q. And White Horse was there?
A. Yes sir.
Q. Now, that is the meeting that you say that Wood Tick spoke of his sister, and at which he pointed southward toward the Nemaha reservation?
A. Yes sir.
Q. Now, where was this council meeting held?
A. At the old mission in the chapel.
Q. Now, do you remember any other person that was there beside members of the council, if so, name any other person that was there beside the members of the council?
A. I do not remember who was there hardly. I know I was there because I was called there I could not mention who was there. The whole nation was there; these other half breeds were not there; the Fullers and them, they were not there. Mrs. Cabana was there for one.
Q. How do you know she was there?
877 A. I saw her there.
Q. What was she doing there?
A. She came in to listen to the council.
Q. This letter that you speak about, who wrote that letter?
A. Mr. Frank La Flesche wrote that letter and Miss Fletcher signed it.
Q. How do you know that he wrote it?
A. I seen him write it.
Q. Did you read it?
A. No sir, I did not read it.
Q. Did you look at it?
A. No sir.
Q. Do you know any word that was in it?
A. No sir, only he wrote it as the man and she was telling him what to write.
Q. You did not read a word that was in the letter?
A. No sir.
Q. Is it not a fact Mrs. Provo you do not know personally that the letter you saw him write was directed to Mrs. Monett at all, do you?
A. I did not go and stand over him and see him write the letter or direct it.
Q. You do not know that it was directed to Mrs. Monett?
A. No, I do not know that; because I did not stand on the table and watch him.
Q. And you do not know what that letter that you saw Frank La Flesche writing even asked Mrs. Monett to come to the reservation, you do not know that?
A. I know when he came up and spoke and asked for his sister, that ought to be evidence.
Q. I am speaking of the letter itself?
A. I do not know anything about the letter.

Q. This letter that you speak of that you saw La Flesche
878 write was after the council meeting was it not?

A. It was during the council, just the finishing up of the council.

Q. It was after the council had spoken in answer to Wood Tick's request?

A. It was after he spoke.

Q. Did you stand there to see Miss *La Flesche* sign that letter that Frank wrote?

A. Yes sir; I saw her go to the table and sign it.

Q. You saw that?

A. Whether she signed her name or not I do not know that.

Q. You saw her walk over to the table?

A. Yes sir.

Q. And that was the table that was used for her general office business?

A. Yes sir.

Q. So you do not know personally that Miss Fletcher signed the letter that you speak of?

A. I suppose she did when she walked up to sign it.

Q. You do not know as a matter of fact that she did sign the letter you refer to, you did not see her sign it?

A. I saw her go up and sign the paper.

Q. Did you see her write her name?

A. I saw her stand there and write her name.

Q. On what?

A. I did not stand over to see what she was writing or nothing.

Q. You do not know what became of that paper that was signed if she signed any?

A. No sir.

Q. So you do not know what became of the paper and you do not know a word that was in it, nor who it was directed to? In other words, all you know about the letter is inferentially from some things you heard said there, is it not?

A. When you see anything with your own eyes, is not that sufficient?

879 Q. The trouble is you did not see with your own eyes a word that was in the letter, and did not read a word that was in it, and so your eyes do not help you in this particular case a particle?

A. I saw this man writing there; I do not know what he was putting there. I saw him writing; I suppose that is sufficient.

Q. As far as you know, it might have been a proclamation for all the half breeds to come on the reservation?

A. I do not know.

Re-direct examination.

Questions by Mr. T. L. SLOAN:

Q. You heard Miss Fletcher tell the council that she would write to Mrs. Monett to come up, did you?
A. Yes sir.

Witness excused.
By consent of the parties hereto the signature of the witness to this deposition is hereby waived.

ORRIN MITCHELL (Indian name Wood Tick), called as a witness in behalf of the complainants, and after being first duly sworn on his oath, testified as follows:
Mrs. MARY MITCHELL was sworn as interpreter.

Direct examination by Mr. THOMAS L. SLOAN:

Q. State your name?
A. My Indian name is Wood Tick, but my English name is Orrin Mitchell.
Q. Did you know Mary Monett in her life time?
880 A. Yes sir.
Q. What relation was she to you?
A. She was his sister.
Q. She was from the same mother, or same father as you?
A. The same mother.
Q. Was your mother's name La-ta-da-me (w)?
A. Yes sir.
Q. Did your sister Mary Monett talk the Omaha language, did Mary Monett speak the Indian language?
A. Yes sir.
Q. Did you at any time request the council to allott your sister any land?
A. Yes sir.
Q. Were the councilmen willing that she should be allotted?
A. He said that he was thinking of the last time she was up here; he says that the council had told her that she was entitled to the Indian land, and that as long as this litigation was up, or on, we have had this fight over the land for half breeds?
Q. Do you know Miss Fletcher, the woman that was known as "High Flyer"?
A. Yes sir.
Q. Did you ever have a talk with Miss Fletcher, or Miss High Flyer, about the rights of your sister to an allotment?
A. Yes sir.
Q. Did Miss Fletcher say that she would send for her?
A. He said that she spoke of it, that she would see about it.

Q. But was that after he asked to have her allotted land?
A. Yes sir.
Q. Now, beside that you wrote her a letter yourself, or had Mr. Fontenelle write it, did you not?
A. Yes sir.
Q. And who told you to write that letter to her?
A. Miss Fletcher told me to write the letter.

881 Cross-examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Has he told all that he knows about the writing of that letter?
A. Yes sir, as he asked him he told all that he knows.

Re-direct examination.

Questions by Mr. THOMAS L. SLOAN:

Q. Were the councilmen favorable, or did they signify what was their indication of being favorable to his sister being allotted?
A. He said that he has never had any business like this, of questions asked him, and he said that he knew that his sister had a right on the Omaha reservation, and he thought that she had, and he said it was pretty hard for him, because he does not understand any law business like this, and questions like this.
Q. You may state what action the council took as to showing their approval, whether by standing up, or by raising their hands?
A. He said they either stand up or they raise their hands.
Q. What did they do at that council?
A. They raised their hands.

Re-cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Can he tell who raised their hands; give the names of the persons that raised their hands?
A. He said that he asked them, and he said they raised their hands, but he did not know who it was, and he said he did not take any particular notice of any of them at all, to any certain ones; he said there was a great many people there.
882 Q. He cannot give the names of any member of the council that did that?
A. No sir he could not remember.
Q. Can he talk English at all?
A. No sir.
Q. Then how does he come to know that Miss Fletcher said she would write a letter?

A. He said there was one that could talk both the Omaha and English language there.
Q. He means some one else told him what she said?
A. Yes sir.
Q. All that he knows about that is what someone else told him?
A. Yes sir.
Q. Who was it that told him?
A. He said the one that was Miss Fletcher, Mr. *man* La Flesche
Q. Now, what was it that Frank La Flesche told him?
A. He said that Frank told him what Miss Fletcher said that she would—that Frank La Flesche told him that she would write a letter.
Q. That is all he knows about the writing of that letter?
A. Yes sir.

Witness excused.
By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

883 I do hereby certify that the above named witnesses William Provo, Julia Provo and Orrin Mitchell (Indian name Wood Tick) were first duly sworn to testify the truth, the whole truth and nothing but the truth, that their depositions were reduced to writing in the presence of said witnesses, and by me typewritten, and that their signatures to said depositions were waived. That said depositions were taken by consent of the parties hereto at the office of John L. Webster, Esq., room 826 New York Life Insurance building, Omaha, Nebraska, on the 10th day of September, 1902. That both complainants and defendants were present by counsel at the taking of said depositions.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 3 witnesses	.30
62 folios at 20c	12.40
	$12.70

Pd. by counsel for pl'ffs.
WM. S. HELLER.

Endorsed: Filed Sep. 19 1902 Geo. H. Thummel, clerk.

884 Thereupon afterwards, to-wit: on said 19th day of September, 1902, deposition of Wm. Hamilton for defendants, was filed in said case, which said deposition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETT, DAVID MONETT, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.

Docket T, No. 364. Depositions.

Testimony taken in behalf of the defendants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, State of Nebraska, on this 3rd day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendants being represented by John L. Webster, Esq.

WILLIAM HAMILTON (Indian name Sinta Haha) called as a witness in behalf of the defendants, and after being first duly sworn on his oath, deposes and says, as follows:

WILLIAM F. SPRINGER, Esq., sworn as interpreter.

Direct examination by JOHN L. WEBSTER, Esq.:

Q. State your name?
A. Sinta Haha.
Q. How old are you?
A. He says Indians have no way of knowing in regard to
885 their ages but he says he should judge he was about 80 years old, between 80 and 90 years of age.
Q. Are you a full blood Indian?
A. He says that he is a full blood Indian, excepting that he has some Ponca blood in his veins.
Q. Are you a member of the Omaha tribe od Indians?
A. Yes sir.
Q. Were you a member of the Indian council of the Omaha tribe at the time when the lands were being allotted by Allotting Agent Fletcher in 1883 and 1884?
A. I was.
Q. Did you during the time of that allotment attend the council meetings of the tribe?
A. Yes sir; he did, himself and White Horse and—yes he was.
Q. Did you know the allotting agent, Alice C. Fletcher?
A. Yes sir; he said that he was friendly to her.
Q. Do you know an Indian by the name of Wood Tick?
A. Yes sir.

Q. At that time did you know that Wood Tick had some mixed blood relatives on the Omaha reservation?

A. He said that he had heard so, but had never seen them.

Q. At that time did he know a mixed blood by the name of Mary Monett?

A. He did not.

Q. Do you remember of the council meet of the tribe which requested Allotting Agent Fletcher to write a letter to Mary Monett to come to the Omaha reservation and receive an allotment of lands?

A. He says Miss Fletcher who was the allotting agent did not say nothing to them about writing to Mary Monett about coming up and receiving her allotment.

886 Q. Did the council request Miss Fletcher to write any such letter?

A. No sir.

Q. Was any such thing as that considered in a council meeting?

A. They did not talk about it at all.

Q. Did Wood Tick at a council meeting make any such request, or express such a vote by the council?

A. He did not, he did not make any such request as that.

Q. At that time did you know Mary Monett, or had you ever heard her name mentioned?

A. He did not know her, nor he did not know her name.

Q. Did you have any talk on last Saturday, or about that date, with Wood Tick about the sending of a letter to Mary Monett?

A. He said about a week ago last Saturday he saw Wood Tick at the Omaha agency, and he asked Wood Tick if it was true that he had said that at a council meeting when Miss Fletcher was allotting lands here that he made a request that his sister come up and receive an allotment, and Wood Tick told him that he did not.

Q. What was said by Wood Tick at that time about the writing of the letter to Mary Monett, and if so, who wrote the letter?

A. Wood Tick told him that he met Miss Fletcher when she was on the reservation allotting land; he said that he met Miss Fletcher on the reservation, and he asked her about Mrs. Monett, and she told him that if he desired he could write to her and have her come up, and she would see about the matter after she got up, and in reply to that letter she said she had not the price or the money to come up with.

Q. Who wrote the letter?

A. He did not say.

Q. Did he say that Miss Fletcher wrote any such letter?

A. He did not say who wrote the letter, but it was not Miss Fletcher.

887 Q. Did Wood Tick say or claim in the conversation that the counsel had authorized him or anybody else to write such a letter to Mary Monett?

A. He did not.

Q. Did you ever hear that anybody had written such a letter before the taking of this evidence in this case?

A. He said a week ago Saturday, when he was talking with Wood Tick, was the first time that he ever knew of it.

Q. Is it not a fact that Wood Tick got Henry Fontenelle to write that letter to Mary Monett?

A. He does not know.

Q. Were you a member of the council in 1890?

A. Yes sir, he has been a councilman most of his life.

Q. Is he a member of the council now?

A. Yes sir.

Q. Do you remember when the witness Woodhull was one of the grass commissioners in 1890?

A. Yes sir.

Q. Did you know that when Woodhull was one of the grass commissioners in 1890 that he had paid $3.00 of grass money per head to Thomas L. Sloan for himself and for his grand mother Margaret Sloan?

A. He did not.

Q. Did you authorize or consent that Woodhull should make any such payment to the Sloans?

A. He said the council did not authorize or consent to Tom and his grandmother receiving a share of that money.

Q. Woodhull said that Sinta Haha was one of the councilmen that directed him to make that payment. Ask him whether that is true or not?

A. He said he did not.

Q. Did you know before the taking of the testimony today that any such money had been paid to Thomas L. Sloan?

A. This is the first he ever heard. He never heard of it before the taking of this testimony.

888 Cross examination.

Questions by Mr. THOMAS L. SLOAN:

Q. You were one of the councilmen at the time Miss Fletcher made the allotment, were you not, Sinta Haha?

A. He was a councilman all through the time that Miss Fletcher was allotting.

Q. You were one of the particular councilmen who was anxious to do the things that Miss Fletcher wanted, were you not?

A. He said that when she first came there to allot she had a council meeting with them, and decided on the course of her work, and did not say anything to them afterward—after they had the first council meeting in regard to the allotting of the land. After that meeting she had no more to say to them about the allotment.

Q. Was that the only one of the allotment council meetings that ou ever attended?

A. He said she had one general council with them, and after that they had no more councils in regard to the question of allotment.

Q. Did you ever attend any other councils with her?

A. He said that after she had moved up to the Winnebago agency she sent for them and had a few meetings up there.

Q. Who did she send for at those times?

A. Benjamin Hallowell, White Horse, Prairie Chicken, Allen Walker and himself, and Yellow Smoke, who was another memeber of the council was absent; he was in Europe.

Q. Did you attend any councils with Miss Fletcher at the mission?

A. No sir.

Q. You never attended any council there at all?

A. No sir.

Q. You were not present at a council at the mission when
889 they discussed the question of allotting Mrs. Provo?

A. Yes, he was there.

Q. I thought he said he never attended any council at the mission?

A. What he had reference to not having any more meeting there, was in regard to the Monett question.

Q. Was he present *to* a meeting of the council in regard to Mrs. Provo at the mission?

A. Yes he was there at the mission.

Q. At the same time they considered the question of Mrs. Murphy's right to an allotment?

A. He said at that meeting they talked of Mrs. Provo's matter but did not talk of Mrs. Murphy's.

Q. Were you present at such a council of the mission when the question came up about allotting Mrs. Teresa Fuller's children?

A. He said there was no question raised about those children.

Q. About the children of Mrs. Fuller?

A. Yes sir, he said Miss Fletcher allotted them without any question.

Q. He don't remember any council where their right was questioned?

A. He said he knew that Mrs. Fuller was an Omaha, and the question never was called to their attention.

Q. They knew Mrs. Murphy was an Omaha too?

A. He said that they did not favor giving Mrs. Murphy any land, but however they gave it to her.

Q. Why did they give it to her?

A. He said Miss Fletcher insisted that she ought to be allotted if John Pilcher was.

Q. He was one of the ones that fought Mrs. Murphy getting an allotment, was he not?

A. He said the matter never came to their attention until
890 after she was allotted, so she was allotted before they knew it.

Q. Is not he one of the ones that was fighting her?

A. He said he never said a word against her for the reason that she was allotted before he knew anything of it, and they let it go without saying anything about it.

Q. You do not remember her right being questioned in the council at all, do you?

A. No, he says there was not any question about it; they never raised any question about it; he never——

Q. He don't remember any objections in the council against Mrs. Murphy?

A. He said there was never any such thing took place.

Q. You are sure of it?

A. To his recollection he said there was no question ever raised about it; he said they were allotted, and that is all he knew about it.

Q. And he is sure there was no council about that at any time?

A. He said that it was allotted the same as the rest of the Omahas.

Q. And he is sure of that?

A. Yes sir.

Q. You was one of the objectors to Mrs. Provo's allotment?

A. He said there was a meeting called at the mission, and there was a council with Miss Fletcher and Frank La Flesche, and Mrs. Provo came there, and she asked if the Omahas would not take pity on her and give her 160 acres of land; she said she did not care for the money, neither for herself or her children if they would give her a home, that is all she would ask for.

Q. Did you oppose that?

A. And in reply to her request Miss Fletcher said, she said to the council that you can do as you like; you can give it to her, or you do not need to if you do not want to.

891 Q. What did you do?

A. When Miss Fletcher told them that the council talked it over among themselves, and they agreed among themselves that they had better give her a quarter section to live on; that she was fair about it and did not want any land for her children, and their annuities, and was asking for a home, and they granted it to her.

Q. You never heard of Mary Monett up to that time, had you?

A. He did not know her or her name.

Q. You never heard anything about her?

A. He said that he heard that he had a relative down in the Nemaha count-y.

Q. How do you know that Wood Tick had relatives down there?

A. He did not know it; he heard that he had relatives down in the Nemaha country.

Q. Where did you hear it?

A. He don't recollect; he heard it.

Q. There are a great many other things that happened at that time that you do not recollect are there not?

A. He said he does not know the woman.

Q. He did not know her name, and never did know her?

A. No, he don't know her.
Q. Was Mr. Provo present at that council at the mission?
A. Mrs. Provo was there alone. If he was there he did not see him.
Q. Did you see Sam Campbell there?
A. He did not see him there.
Q. Did you see Mr. Frost there?
A. He did not see him there.
Q. He don't know whether he was there or not?
892 A. He said he did not see him there.
Q. Ask him whether he knows whether he was there?
A. He did not see him there.
Q. Does he remember whether I was there?
A. He did not see you there.
Q. Was Frank Murphy there?
A. He did not see him there.

Witness excused.
By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witness, William Hamilton (Indian name Sinta Haha) was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his said deposition was reduced to writing in the presence of said witness and by me typewritten, and that his signature to said deposition is waived. That said deposition was taken by consent of parties hereto at the office of John L. Webster, at Omaha, Nebraska, on the 3rd day of September, 1902. That both complainants and defendants — present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
20 folios at 20c	4.00
	$4.10

P'd by counsel for def'ts.
WM. S. HELLER.

Endorsed: Filed Sep. 19 1902 Geo. H. Thummel, clerk.

893 Thereupon afterwards, to-wit: on the 22nd day of September, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

MITCHELL MONETTE ET AL.
vs.
UNITED STATES OF AMERICA ET AL. } No. 364, Docket T.

The Replication of Mitchell Monette et al., Plaintiff-, to the Answer of United States of America et al., Defendants.

These replicants, saving and reserving to themselves all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendants, for replication thereunto say; that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by these replicants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these replicants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray as in and by this said bill they have already prayed.

THOS. L. SLOAN,
CHARLES E. CLAPP,
Solicitors for Complainant-.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

894 Thereupon afterwards, to-wit: on the 26th day of September, 1902, a stipulation was filed in said case, which said stipulation is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETT, DAVID MONETT, JENNIE M. Arnold, and Cassie M. Karsh, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.

Docket T, No. 364.
Stipulation.

It is hereby stipulated between the parties that the following named person, Thomas L. Sloan, Esq., will testify in behalf of the complainants, to the facts set down below; and it is further stipulated and agreed that said statements may be received in evidence with like force and effect as if his deposition had been formerly taken.

Thomas L. Sloan will testify that there is an error in the name of the witness, Charles Robinson, whose Indian name is Muca Watha, who testified in the above entitled case at Pender, Nebraska, on the 22nd day of August 1902, that his name should properly be Richard Robinson, instead of Charles Robinson, Richard Robinson, being his correct English name.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Sep. 26 1902 Geo. H. Thummel, clerk.

895 Thereupon afterwards, to-wit: on said 26th day of September, 1902, depositions were filed in said case, which said depositions are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETT, DAVID MONETT, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.

Docket T, No. 364. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life Insurance building, Omaha, Nebraska, on this 18th day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendants being represented by John L. Webster, Esq.

DAVID MONETT, produced as a witness in behalf of the complainants, and after being first duly sworn, testified as follows:

Direct examination by THOMAS L. SLOAN, Esq.:

Q. Where do you reside?
A. At the Omaha agency.
Q. What business are you in?
A. I am a contractor and builder, and do well work.
Q. For whom are you working generally?
A. The Indians.
Q. Do you understand sufficient of the Omaha language to transact your business?
896 A. Yes sir.
Q. How long have you been living there?
A. 11 years.
Q. Where were you living in the year 1884?
A. On the half breed reservation, in Nemaha county.
Q. With whom?
A. My parents.
Q. Who was your mother?
A. Mary Monett.
Q. Do you remember of your mother receiving a letter during the summer of 1884?
A. Yes sir.
Q. Were you present when that letter was delivered?
A. Yes sir.
Q. By whom was it delivered?

A. William Lambert, our nearest neighbor.

Q. What did he state when he delivered the letter to your mother?

Mr. WEBSTER: Objected to as being incompetent and hearsay.

A. He said—he produces a letter and says; I do not know but what I have done you folks a great injury by not delivering this letter before this; that he received it of Campbell at Nemaha City to deliver directly to my mother, but he forgot it, and carried it around with him possibly 30 days before he discovered it.

Q. Did you see the letter?

A. Yes sir.

Q. Did you read it?

A. I did.

Q. What has become of that letter?

A. It was lost.

Q. Have you and your mother made search for that letter?

A. Yes sir, we did.

Q. Did you look among the family papers where such papers are usually kept?

A. Yes sir, we made a search for it.

Q. And you were not able to find it?

A. No sir.

Q. Do you remember the contents of that letter, or a part of it?

A. I remember a part of it.

Q. You may state what you recollect of that letter?

A. It was a letter from Miss Fletcher, the allotting agent of
897 Indian lands, stating that the Indian council wanted my mother to have land, and for her to come immediately; that the work was almost done, and she would not be on the reservation over a week or ten days, to come up and make her selection and be allotted, was about all I remember.

Q. How long after the date of the letter was it before you received it?

A. A month I presume, as near as I could judge after Miss Flecher had gone away.

Q. What was the condition of your mother's health at that time?

A. She was afflicted with a cancer at the time.

Q. Was she under treatment?

A. Yes sir.

Q. Where was your mother living in the spring of 1891?

A. On the Omaha reservation.

Q. Upon what particular land, if you remember?

A. It was on the Fontenelle land.

Q. Where was that land with reference to the land which was claimed by your mother?

A. The place where we lived with reference to the land she claimed?

Q. Yes sir.

A. We lived west of it.
Q. Was it some distance away, or immediately adjoining?
A. It was adjoining.
Q. Do you know "Nebraska" or Alfred Hallowell?
A. Yes sir.
Q. Did you ever see him at your mother's house?
A. Yes sir.
Q. When was that?
A. It was early in the spring, sometime after we moved there.
Q. Was there any business transaction between Alfred Hallowell and your mother?
A. Yes sir.
898 Q. State what it was?
A. Hallowell sold his right to that land to my mother.
Q. Was there anything paid to him for it?
A. I saw her give him some money.
Q. Was anything said by Nebraska to you in regard to it?
A. He gave me to understand that he gave her that land.

Cross-examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Your name is David Monett?
A. Yes sir.
Q. Was you up at Pender when we took the testimony of Mitchell Monett and Alfred Hallowell about this supposed sale of this land?
A. No sir.
Q. Where were you when we were taking that testimony?
A. I must have been—I was at Ponca, Nebraska.
Q. When did you first talk to Thomas L. Sloan, about the purchase of this land from Hallowell?
A. I never spoke to him about the purchase of the land that I know of.
Q. You never did?
A. No sir.
Q. How did he come to ask you about the purchase of that land from Hallowell if you never talked to him about it?
A. I do not know.
Q. What reason had he to know that you ever heard of it?
A. I suppose because I was with him there at the time.
Q. That is the only reason you can give why you suppose he knew that you knew anything about it?
A. Yes sir.
Q. David Monett, when was this occurrence?
A. This transaction?
Q. When was this occurrence that you spoke of between Hallowell and your mother?
A. When?
Q. Yes sir.

A. I cannot state exactly. I think it was sometime in April.

899 Q. April when?

A. 1891.

Q. What makes you think it was in 1891?

A. That is the spring we lived on this Fontenelle land, that we lived there.

Q. What has that got to do with Alfred Hallowell?

A. I just stated that he came to our house that year and mother and him made this arrangement.

Q. Well, but what difference does that make whether you was living on the Fontenelle land or any other land?

A. We were living on the Fontenelle land at this time.

Q. Now, what did Hallowell say to your mother or first let me ask you, did you hear him make any statement to your mother?

A. Yes, to a good extent, I understand part, and more so by gestures, and just understand the Omaha language, partly understand it.

Q. That is to (s)day, you only understand it partly?

A. At that time, as well as I do today.

Q. But you have got to now depend very much upon gestures to know what the Indian is saying?

A. Oh, no, I can tell what they say to a great extent.

Q. Why did you say a moment ago that you depended on gestures?

A. I do not understand the conversation fully; I cannot follow a conversation?

Q. You cannot?

A. Except words occasionally in doing business.

Q. If you can only understand words occasionally, and cannot follow a conversation, do you mean to say that you can tell me what Alfred Hallowell said to your mother?

A. It was also interpreted to me at the time by mother.

Q. I am asking you whether you could understand what Hallowell said to your mother?

900 A. I understood the substance of it.

Q. Now, who was it that interpreted this to you; you say it was interpreted to you?

A. My mother did; she could talk the language fluently.

Q. She interpreted to you when? When did she interpreted it to you?

A. At this particular time, as the conversation went on fully.

Q. Will you state your recollection of what Hallowell said just what he said, not your conclusion about it, but what he said if you have any recollection about it *it* at all?

A. He said he gave her that land; that is the Indian way of saying it; he gave it to her.

Q. Is that all he said?

A. That is all I believe.

Q. What did your mother say?

A. She told me that she bought his land, all his right.
Q. She told you that she wanted the land?
A. That she bought it, and paid for it.
Q. I am asking you what she said to Hallowell at that time?
A. Oh, I do not remember exactly the conversation, but it was on this subject, that she wanted this particular claim, and he gave it to her for consideration.
Q. That is as near as you can tell about what your mother said and what Hallowell said?
A. Yes sir.
Q. That is as near as you can tell what your mother said to Hallowell?
A. Yes sir.
Q. Now, you have told all, have you, that was said between Hallowell and your mother as far as you recollect it?
A. I think so.
Q. Now, Mr. Monett, have you not been told what Alfred Hallowell has testified to in this matter?
A. No sir.
901 Q. You have not?
A. No sir.
Q. Do you know what he has testified to?
A. No sir.
Q. Do you not know that Alfred Hallowell testified that he never had any such conversation with your mother?
A. No sir.
Q. You did not know that?
A. No sir.
Q. When did you first go to the Omaha reservation?
A. 11 years ago.
Q. That would be 1891?
A. The first time——
Q. When you came there to live, I mean when you lived there? I did not mean visits?
A. 11 years ago. That would be 1891.
Q. Did your mother move there at the same time you did?
A. Yes sir.
Q. The family moved up together?
A. Yes sir.
Q. And how old was you at that time?
A. I was born in 1859, that is 11 years ago. I must have been about 32 years old.
Q. Where were you born?
A. On the half breed reservation in Richardson county, Nebraska on my mother's allotment.
Q. Now, if you get this letter, or your mother did, that you speak about, in 1884, and if you did not move to the reservation until 1891, it was seven years after the time when you say that your mother received this letter?

A. The allotment was off at the time, it would not do us any good to come. We came at this time when we did move excepting an allotment that spring; that was the reason we moved at that time.

Q. So when you moved up in 1891 you heard there was going to be an allotment of lands up there on the Omaha reservation?

902 A. Yes sir.

Q. And that is why you moved up?

A. Yes sir.

Q. So that if you had not heard that there was to be an allotment of lands on the Omaha reservation in 1891, you would not have moved up there?

A. Yes, we would. We sold our farm in Richardson county or Nemaha county.

Q. When you say you sold your farm, you sold the land which the Government had given to your mother as an allotment, as a half breed, on the Nemaha reservation, that is what you mean? That is the land you sold?

A. Our farm.

Q. Was it the land which the Government had patented to you as a mixed blood on the Nemaha reservation?

A. Land that we sold lastly?

Q. Yes sir:

A. No sir, it was not.

Q. The land on the Nemaha reservation, your allotment, didn't you sell that before you went to the Omaha reservation?

A. I did not.

Q. Did your mother sell it?

A. Yes sir.

Q. And it was after you sold that, and got the money for it that you went up to the Omaha reservation to get more land was it not?

A. We came to our home.

Q. You call it home wherever you could get more land?

A. We were justly entitled to it; we were entitled to a home on the Omaha reservation?

Q. Monett, in the year 1884 could you read English?

A. 1884?

Q. Yes sir?

A. I could read English ever since I was seven years old.

Q. Could you write?

A. I could write.

Q. Now you say you saw this letter which came to your mother in 1884?

A. Yes sir.

903 Q. Did you have it in your hands?

A. Yes sir.

Q. Did you read it?

A. I read it.

Q. Now, if that letter was as you think it was, why didn't you immediately come to the reservation?

A. It was too late in the day; the allotment had passed; Miss Fletcher had gone.

Q. How do you know she had gone?

A. By the statement in the letter and inquiries made later I presume; mother looked after those affairs.

Q. She was not there in 1891, was she, when you did come up?

A. No sir.

Q. And there was no allotting agent there in 1891 when you did come up, was there?

A. I never saw any.

Q. Was there any reason why you could not have gone in 1884 with the hope of getting the land as well as in 1891?

A. No sir. We were advised there was to be an allotment that spring.

Q. Who told you there was going to be an allotment in 1891?

A. It was generally supposed, by Sam Campbell, an old neighbor.

Q. That is about the time a good many of you mixed bloods started up to the Omaha reservation?

A. There wasn't anybody in our crowd but our own family.

Q. How many were there of your family that went up at that time?

A. Four.

Q. Now do you know Miss Fletcher?

A. No sir.

Q. Did you ever see her?

A. No sir.

Q. Did you ever see her handwriting?

A. That was purported to be hers that I saw; her dictation or her letter; I do not know whether it is her handwriting.

904 Q. So you do not know that she did write it—write that letter that you spoke of?

A. I was not there when she wrote it. Campbell said it was a letter from Miss Fletcher.

Q. Campbell said so. Campbell is not the man that gave the letter to you is it?

A. Campbell is the man that gave it to Mr. Lambert of Nemaha to be delivered to us.

Q. The man who gave it to you and that brought it to you was Lambert and not Campbell?

A. Yes sir, our neighbor Lambert.

Q. Why do you say that Campbell said Miss Fletcher wrote it? The fact is it was Lambert that delivered it to you and not Campbell at all?

A. Campbell did not know the contents of the letter; he said it was important.

Q. I did not ask about that.

A. What was the question then, about Lambert?

Q. It was Lambert that told you about the letter and not Campbell?
A. Lambert is the man that delivered the letter.
Q. Then the fact is you did not have any talk with Campbell about that letter at all, did you?
A. We did later.
Q. At that time you did not see Campbell, did you?
A. Not the day the letter was delivered.
Q. And you had not seen him for a long time before that, had you?
A. No, we had not seen Campbell from the time he came up here and went back, I saw him afterwards.
Q. Who was this man Lambert, a neighbor of yours?
A. Yes sir.
Q. Lambert as you understood it got the letter from Campbell?
A. Yes sir.
905 Q. He did not get it from Miss Fletcher?
A. No sir, it was handed to him at Nemaha City, as Campbell was not coming our way, and Lambert returned and he delivered it to him, and he says, If you cannot deliver it I will take it over myself.
Q. You got it second or third hand?
A. Yes, and too late.
Q. What did you do with that letter after you received it?
A. It got lost some way.
Q. I am asking you what you did with that letter after you received it?
A. We read it.
Q. After you read it what did you do with it?
A. Mother had charge of the letter. It was here and it was lost.
Q. How do you know it was lost?
A. Because we could not find it.
Q. How do you know you could not find it?
A. We hunted for it.
Q. When?
A. When we wanted to find it.
Q. When was that? It has been 20 years since then?
A. I do not know; we looked up the letter and we could not find it.
Q. You cannot tell?
A. No sir.
Q. You hav-n't the remotest idea when you hunted for it, have you?
A. No sir, I cannot give dates.
Q. You hav-n't the remotest idea when you looked for it?
A. I stated it was hunted for.
Q. Who hunted for it, can you tell me that?
A. Mother and I.
Q. Where did you hunt for it?

A. In any place, where our papers and letters were placed, supposed to be.

906 Q. Where did you have your papers?

A. We had bureau drawers, and usually in them I think.

Q. You hunted in bureau drawers?

A. Yes sir, where we supposed it might be.

Q. Are you guessing at that?

A. I hunted for it.

Q. But you cannot tell when it was?

A. No, not exactly.

Q. If you do not know exactly, can you give me an approximate idea, was it this year, or this month, or this week, or last year?

A. It is longer ago than that.

Q. Was it last year?

A. It was when we still lived in Richardson county, Nemaha county.

Q. It was before you moved up here, you think?

A. I think so.

Q. Are you sure about that?

A. Yes sir.

Q. Now, I have got you within a period of about seven or eight years; can you tell any more definite about the time when you looked for that letter?

A. No sir, I cannot.

Q. Now, how many letters did you get notifying you—or rather inviting you to come to the reservation, one or two?

A. Only one I ever saw from Miss Fletcher.

Q. I did not say anything about Miss Fletcher in my question did I?

A. That is the only one I got.

Q. Did you get one signed by Henry Fontenelle to come up written at the time extending the same invitation?

A. I do not remember.

Q. You do not remember any such letter?

A. No sir.

Q. Have you not been advised that Wood Tick, who is your uncle, is he not, and a brother to your mother?

907 A. Wood Tick is my uncle.

Q. He is a brother of your mother?

A. Yes sir.

Q. Have you not been advised that Mr. Wood Tick gave his testimony in this case, in which he testified that at that time he had a letter written by Henry Fontenelle and sent down to your mother asking you to come up to the reservation, or words to that effect?

A. I simply know that Wood Tick has been giving testimony, but the nature of it I do not know anything about.

Q. Well, now, your recollection is that you only received one letter?

A. Yes sir.

Q. And that is the only one you know anything about?
A. That is the only one I know anything about.
Q. If it happened that that was the letter that was sent by Fontenelle, why then that would have been the only letter that you saw?
A. This one I saw was from Miss Fletcher.
Q. Suppose the fact is that Miss Fletcher never wrote such a letter at all, that you did not see a letter from her, did you?
A. I think I saw a letter from her.
Q. You think you did anyhow?
A. Yes sir.
Q. All you know about this letter, Mr. Monett is your recollection that in 1884, that you saw that letter at the time when you say Lambert delivered it to your mother, and you never saw that letter afterward and you do not know where it is now?
A. No sir, I do not know where it is now.
Q. You never saw it except at that time, did you?
A. I saw it and read it at that time.
Q. And that is the only time you ever saw it?
A. I think so, to the best of my recollection.
908 Q. Can you tell when it was dated?
A. No, sir.
Q. Can you tell when you received it?
A. I cannot just recollect the date or the time of the year.
Q. What is your recollection of the time of the year when you received it?
A. It seems to me it was in the fall of the year, I never paid much attention to it. I never knew I would have so many questions asked about it or I would have looked it up.
Q. You think it was in the fall of the year, do you mean of the year 1884?
A. It was, it was at the close of the allotment, whenever that was; I do not know exactly when that was, when she got through with her work here; I think it was in the summer of 1884, was it not?
Q. I do not know; you are telling this story; your understanding of that letter, Monett, was that if you did not get up to the reservation before Miss Fletcher left that you would not get any allotment?
A. Not at that time.
Q. Where did you get that idea?
A. I supposed the work was done and she had gone away.
Q. Well, now, Monett, how did that letter begin, was it in an envelope or not?
A. Yes, I think it was.
Q. Do you know what was the address on the envelope?
A. Mrs. Mary Monett.
Q. Anything else or more?
A. I disremember—county or State or not—it was presented.
Q. How did the letter begin?

A. Oh, I do not remember the whole letter. I just remember some of the substance that I have stated in regard to the council wanting her to come up and select land for herself and family to be
909 allotted.

Q. You do not pretend to say that was the language of the letter, do you?

A. I think it was as near as I can recollect.

Q. But you said a moment ago that you only recollected a part of the letter?

A. I stated what I remembered.

Q. What was the other part of the letter?

A. I do not remember the other part I have forgotten.

Q. How much of that letter have you forgotten?

A. I do not remember how much.

Q. You cannot tell how much you forgot?

A. No sir, I do not think there was any more to it; I think that was the whole sum and substance of it.

Q. If you think that now, Mr. Monett, why did you say a while ago that you only recollect a part of it?

A. I stated what I recollect of it; there may have been more of it, of course, as I stated before, I did not expect to have to remember it, but I remember that much.

Q. Do you know whether the writing in that letter was the same hand writing as the signature?

A. I do not remember; it has been so long ago.

Q. Do you remember whether the body of that letter was in a man's hand writing or a lad*ie*'s hand writing?

A. I do not remember as to that.

Q. You cannot tell; you do not know that?

A. I paid no attention to that part of it.

Q. Would you know Henry Fontenelle's hand writing if you saw it?

A. No sir, I never saw any of it.

Redirect examination.

Questions by Mr. THOMAS L. SLOAN:

910 Q. Do you know Lata Dowie?

A. Not by that name.

Q. Do you know your mother's mother?

A. Yes, sir, she lived with us.

Q. Where did she live with you?

A. On the half breed reservation.

Q. How long did she live there with you?

A. I do not remember exactly, I remember my mother though.

Q. She was a full blood Indian woman?

A. Yes sir.

Q. Did she talk Indian or English?

A. Indian.

Q. Did she and your mother talk together in the Indian language?
A. Yes sir.
Q. At your home?
A. Yes sir.
Q. And are you the oldest of the family?
A. Yes sir.
Q. Was you with her frequently?
A. I was with my grandmother all the time; she took care of me.
Q. In reference to this letter of Miss Fletcher; have you had any talk or conversation with Mr. Campbell in regard to it?
A. Yes sir.
Q. Did he tell to you by whom the letter was delivered to him?
A. Yes sir; he said it was delivered by Miss Fletcher direct to him.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

911 I do hereby certify that the above named witness, David Monett, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of the said witness, and by me type-written, and that his signature to said deposition was waived; that said deposition was taken by consent of parties at the office of John L. Webster, Esq., Omaha, Nebraska, on the 18th day of September, 1902.

That both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	10
42 folios at 20c	8.40
	8.50

Endorsed: Filed Sep. 26 1902 Geo. H. Thummel, clerk.

912 Thereupon afterwards, to-wit: on the 1st day of October, 1902 depositions were filed in said case, which said depositions are in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETT, DAVID MONETT, JENNIE M. Arnold, and Cassie M. Karch, Complainants, *vs.* THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.	Docket T, No. 364. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 26th day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendants by John L. Webster, Esq.

THOMAS L. SLOAN, produced as a witness in behalf of the complainants, and after being first duly sworn on his oath, testified as follows:

Direct examination by Mr. CHARLES E. CLAPP:

Q. Did you have any conversation with Miss Fletcher at the time the council was considering the Monette family?

A. Yes, sir.

Q. State what that conversation was?

Mr. WEBSTER: The defendants object to that as hearsay and secondary evidence.

913 A. Miss Fletcher said that she prepared a notice for Mrs. Monett to come up, and wanted to know if Mr. Campbell lived sufficiently near so as to deliver it without any inconvenience, and to deliver it promptly.

Cross-examination waived.

Witness excused.

By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

I hereby certify that the above named witness, Thomas L. Sloan, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his said deposition was reduced to writing in the presence of the said witness, and by me type-written, and that his signature to said deposition was expressly waived. That said deposition was taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska, on the 26th day of Sep-

tember, 1902. That both complainant- and defendant- were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
4 folios at .20	.80
1 certificate	.25
	$1.15

Endorsed: Filed Oct. 1, 1902. Geo. H. Thummel, clerk.

914 Thereupon afterwards, to-wit: on the 1st day of October, 1902, depositions were filed in said case, which said depositions are in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETT, DAVID MONETT, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.

Docket T, No. 364. Depositions.

Testimony taken in behalf of the defendants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life build., Omaha, Nebraska, on this 27th day of September, 1902, the complainants being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendant- being represented by John L. Webster, Esq.

HARRISON MCCAULEY, (Indian name "Duba Monie") called as a witness in behalf of the defendants, and after being first duly sworn, testified as follows:—

WILLIAM F. SPRINGER, Esq., sworn as interpreter.

Direct examination by Mr. JOHN L. WEBSTER:

Q. Are you an Omaha Indian?

A. Yes, sir.

915 Q. How old are you?

A. He said he has no way of keeping track of his age, but he judges he is between 60 and 70 years of age.

Q. Were you a member of the council when Miss Fletcher was making allotments in 1883 and 1884?

A. He was.

Q. Did you attend the council meetings while Miss Fletcher was allotting lands?

A. Yes, sir.

Q. Did the council at any of those meetings consent that Mary Monett should have an allotment of land on the Omaha reservation?

A. He did not to his knowledge they did not consent to anything of that kind.

Q. Do you know anything about the council requesting Allot-ing Agent Fletcher to write a letter to Mary Monett to come to the reservation and receive an allotment of lands?

A. He said that at any of the council meetings that he has ever attended there was no such thing as that requested of Agent Fletcher.

Q. Do you know Wood Tick?

A. Yes, sir.

Q. Did Wood Tick make any such request at any meetings of the council that Mary Monett should receive allotments of lands on the reservation?

A. He has never appeared at any council meeting and asked that his sister be allotted. He said that at any of the meetings
916 that he has ever attended he has never seen Wood Tick there and get up in the council meeting and ask that his sister be allotted.

Q. When did you first hear that the Monetts claimed that any such action had been taken by the Indian council, or did you ever hear of it before the taking of testimony in this case?

A. He said he heard that she was coming up to try to get an allotment, and he never saw her, and she died never seeing him.

Q. Were you a member of the Indian council in the year 1890?

A. He said he was. He has been a member of the council for a long while.

Q. Do you know the time when Richard Robinson, Thomas McCauley, Spafford Woodhull and Henry Blackwood were grass commissioners?

A. Yes, sir.

Q. Do you know that they were grass commissioners?

A. Yes, sir.

Q. Did the council authorize the grass commissioners named to pay any money to Thomas L. Sloan and Margaret Sloan?

A. He said he was present, but there was no such thing as that talked of.

Q. Did you know that Thomas L. Sloan and Margaret Sloan had got any part of that grass money?

A. He does not know. He said if they got any part of it he would have known.

Cross examination.

Questions by Mr. THOMAS L. SLOAN:

Q. Did you know me at all at the time the grass money
917 was paid or not?

A. He said before he knew Tom at that time.

Q. Who was it prepared the roll for the payment of grass money at that time?

A. He does not remember.

Q. Did the councilmen approve of the payroll and the payments as they were made at that time?

A. He says usually they take the roll and approve of the payment accordingly, and he said it must have been right because they were paid.

Re-direct examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Did you know, or did the council know that Thomas L. Sloan or Margaret Sloan's name were on that grass roll?

A. He does not.

Q. Was the name of Thomas L. Sloan or Margaret Sloan read over by any interpreter to the council from the roll as made up?

A. He did not hear their names read.

Q. If their names had been read from that roll would you not have remembered that fact?

A. He did not hear them read.

Questions by Mr. CLAPP:

Q. Ask him if that roll was read at all; if any names were read out on the roll?

A. They did not read the roll.

Q. Were the names on the grass roll read to the council?
918 A. When they make the roll to pay them he says that — usually read the names.

Q. Did they read the names of this particular grass roll?

A. He said they read them.

Q. Who read the names?

A. He don't remember.

Q. Did he hear the names read?

A. He said he usually hears the names read, and he did.

Q. He heard the names read?

A. Yes, sir.

Q. If the names of Margaret Sloan and Thomas L. Sloan were on that grass roll and were read you must have heard their names read?

A. He did not hear their names read.

Q. Did he hear the names of all the others on the grass roll read?

A. He said there was a good many not on.
Q. Did he hear the names of all the others on the grass roll read?
A. He said that he heard all of the names read that they wanted to give payments to, but those that they did not want to give payments to he did not hear them read.

Witness excused.
By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

919 I do hereby certify that the above named witness, Prairie Chicken, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of said witness, and by me typewritten, and that his signature to said deposition was expressly waived. That said deposition was taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska on the 27th day of September 1902. That both parties, complainants and defendants, were present by counsel at the taking of said deposition.

WM. S. HELLER,
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
10 folios at .20	2.00
1 certificate	.25
	$2.35

Endorsed: Filed Oct. 1 1902 Geo. H. Thummel, clerk.

920 Thereupon afterwards, to-wit: on the 2nd day of October, 1902, a deposition was filed in said case, which said deposition is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETT, DAVID MONETT, JENNIE M. Arnold, and Cassie M. Karch, Complainants, vs. THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.	Docket T, No. 364. Stipulation.

It is hereby stipulated that the deposition of Frank La Flesche may be taken before Amson S. Taylor, 1305 F street, north-west, Washington, D. C. on Friday, September 26th, 1902 between the hours of 9 o'clock a. m. and 6 o'clock p. m., and that the parties

hereto may transmit to the officer taking the deposition interrogatories and cross interrogatories to be propounded to the said witness.

The plaintiffs may have an attorney present during the taking of the said deposition if they so desire, and if the plaintiff so elect, then the defendants may also have an attorney present but no examination other than be the interrogatories submitted shall be made.

CHARLES E. CLAPP,
Counsel for Complainants.
JNO. L. WEBSTER,
Counsel for Defendants.

921 In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETT, DAVID MONETT, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
v.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Halliowell, Defendants.
Docket T, No. 364.

Interrogatories to be Propounded to Frank La Flesche in Behalf of the Defendants in the Above Entitled Cause.

1. State your name, age and present place of residence, and your present business?

2. State your tribal relation if any of the Omaha tribe of Indians?

3. Are you versed in the English language, and in what schools were you educated?

4. Were you on the Omaha Indian reservation in the years 1883 and 1884, and if so, in what capacity did you act as interpreter or otherwise when Alice C. Fletcher was making allotments of land under the act of 1882?

5. Did you attend the various council meetings of the tribe during the years 1883 and 1884 when the question of allotments were under consideration? and act as official interpreter for A. C. Fletcher at such council meetings?

6. At that time did you know Anna Cabana, an Indian known by the name of Wood Tick, a white man by the name — Samuel H. Campbell?

922 7. Did you then know White Horse, Wajepa, Prairie Chicken and the other members of the council?

8. State whether at any of such council meetings Wood Tick made a request to the members of the council to agree that Mary Monett, or the Monett family might be permitted to go from the Nemaha reservation of the Omaha reservation and receive an allotment of lands upon the Omaha reservation?

9. Did the council at any of said meetings vote in favor of Mary Monett receiving an allotment of lands upon the Omaha reservation by the holding up of their hands, thereby voting in the affirmative?

10. Did any such proceeding take place?

11. Did you interpret any such proceedings by the Indian council to A. C. Fle-cher allot-ing agent?

12. If any such proceeding has taken place before the Indian council would you not as the interpreter for A. C. Fletcher have known of the fact?

13. *Was* you at a council meeting held at the mission, or at any other place for and in behalf of A. C. Fletcher by the direction of the Indian council write a letter inviting Mary Monett to come to the Omaha reservation and receive an allotment of land, which letter being signed by A. C. Fletcher, allot-ing agent?

14. Did A. C. Fletcher either write or sign any such letter?

15. Was any such letter delivered by A. C. Fletcher or yourself to Samuel H. Campbell to be by him taken to the Nemaha reservation and delivered to Mrs. Mary Monett?

16. You may state what you know of Wood Tick soliciting
923 anybody to write such a letter, and whether a letter was written by anybody directed to Mary Monett, and if so state all the facts relating thereto so far as you know them?

JNO. L. WEBSTER,
Att'y for Defendants.

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETT ET AL., Complainants, vs. U. S. OF AMERICA ET AL., Defendants. } Doc. "T," No. 364.

Cross Interrogatories to be Propounded to Frank La Fle-che on Behalf of the Complainants in the Above Entitled Cause.

1. How many council meetings of the Omaha tribe of Indians were held during the years 1883 and 1884?

2. If your answer to # 9 is in the negative, what is it that now causes you to remember what took place at those council meetings and when and where were the council meetings held?

3. When and where — the council meetings held that you have *t* testified to in answer to interrogatories # 10 and # 11.

4. Are you positive you were present at all of the council meetings of the Omaha tribe of Indians at which discussions as to permitting Mary Monett or the Monett family to receive allotments of land upon the Omaha reservation were discussed?

924 5. Might there not have been council meetings at which you were not present when Woodtick made a request to the

members of the council that Mary Monett or the Monett family be given land upon the Omaha reservation and that the council gave its consent by the holding up of their hands?

6. As interpreter for A. C. Fletcher, how many documents were you called upon to write for her?

7. Did you write any letters at all under the direction of the council at any of these meetings?

8. Who were the persons at the council meeting held at the mission and which you have testified to in answer to interrogatory # 13?

9. Who were present at this meeting at the mission from the Omaha tribe of Indians?

10. State whether or not there were other persons besides the council and the tribe present? If so, give their names.

11. Did you see Samuel Campbell there?

12. State whether or not Anna Cabana was there?

13. State whether or not Artemesia Frost and Leonard Frost were there?

14. If your answer to # 14 is in the negative why do you now say that you never wrote a letter which was dictated by the council requesting Mary Monett or the Monett family to come to the Omaha reservation and receive an allotment of land?

15. If several witnesses should testify that you did in fact write such a letter and that it was signed by A. C. Fletcher, what would your answer be?

925 16. If you- answer to interrogatory # 16 is that Woodtick did ask some one to write such a letter, you may state whether or not your information is from seeing the letter or is it from hearing of it from some one else?

17. You will please state only such information as you know from your own personal knowledge and not from statements of others.

THOS. L. SLOAN,
CHAS. E. CLAPP,
For Complainants.

DISTRICT OF COLUMBIA, *ss*:

Deposition of Frank La Flesche, taken before me, Anson S. Taylor, a notary public in and for the District of Columbia, on the 26th day of September, A. D. 1902, between 9 o'clock a. m. and 6 o'clock p. m., in said District, pursuant to the *next* stipulation, to be read in evidence in behalf of the defendants *and in* action pending in the circuit court of the United States for the district of Nebraska in which Mitchell Monett *et al.* are complainants and The United States of America *et al.* are defendants.

FRANK LA FLESCHE of lawful age being by me first duly examined and solemnly sworn deposes and says as follows:

Interrogatory No. 1. State your name, age, present place of residence and present business.

Answer. Frank La Flesche, about 45, Washington, D. C., clerk in the Indian office.

Interrogatory No. 2. State your tribal relation, if any, to the Omaha tribe of Indians.

926 Answer. I am a member of the Omaha tribe.

Interrogatory No. 3. Are you versed in the English language and in what schools were you educated?

Answer. I speak the English language and was educated at the Omaha mission school, Omaha reservation, Nebraska. Have since taken a course in law in the National University of Washington, D. C.

Interrogatory No. 4. Were you on the Omaha reservation in the year 1883 and 1884 and if so in what capacity did you act as interpreter or otherwise when Alice C. Fletcher was making allotments

Answer. I was on the Omaha Indian reservation in the year 1883 and 1884 and acted as clerk and interpreter to Special Agent Alice C. Fletcher in all matters that pertained to the making of the allotments of land to the Omaha Indians under the act of 1882.

Interrogatory No. 5. Did you attend the various council meetings of the tribe during the years 1883 and 1884 when the question of allotments were under consideration and act as official interpreter for A. C. Fletcher at such council meetings?

Answer. I attended the various council meetings of the tribe during the years 1883 and 1884 excepting at a time when I was
927 absent from the reservation on leave of absence for the period of one month either in August or September 1883, and the question of allotments were under consideration. I acted as official interpreter for Special Agent A. C. Fletcher at such council meetings but sometimes the Government interpreter did the interpreting at these councils.

Interrogatory No. 6. At that time did you know Anna Cabana,

an Indian known by the name of Wood Tick, a white man by the name of Samuel H. Campbell?

Answer. At that time I knew Anna Cabana, Wood Tick and Samuel H. Campbell.

Interrogatory No. 7. Did you then know White Horse, Wajepa, Prairie Chicken and the other members of the council?

Answer. Yes.

Interrogatory No. 8. State whether at any of such council meetings Wood Tick made a request to the members of the council to agree that Mary Monett or the Monett family might be permitted to go from the Nemaha reservation to the Omaha reservation and receive an allotment of land upon the Omaha reservation?

Answer. I did not know of Wood Tick making any such request of the council at any of the council meetings at which I was present.

Interrogatory No. 9. Did the council at any of said meetings vote in favor of Mary Monett receiving an allotment of lands upon
928 the Omaha reservation by the holding up of their hands thereby voting in the affirmative.

Answer. Not to my knowledge.

Interrogatory No. 10. Did any such proceedings take place?

Answer. Not that I know of.

Interrogatory No. 11. Did you interpret any such proceedings by the Indian council to A. C. Fletcher allotting agent?

Answer. No sir.

Interrogatory No. 12. If any such proceedings had taken place before the Indian council would you not as the interpreter for A. C. Fletcher have known of the fact?

Answer. Yes, sir.

Interrogatory No. 13. *Was* you at a council meeting held at the mission, or at any other time or place for and in behalf of A. C. Fletcher by the direction of the Indian council, write a letter inviting Mary Monett to come to the Omaha reservation and receive an allotment of land, which letter being signed by A. C. Fletcher allotting agent?

Answer. I wrote no such letter at any of the council meet-
929 ings at which I was present by the direction of the Indian council.

Interrogatory No. 14. Did A. C. Fletcher either write or sign any such letter?

Answer. Of that I have no knowledge.

Interrogatory No. 15. Was any such letter delivered by A. C. Fletcher or yourself to Samuel H. Campbell to be by him taken to the Nemaha reservation and delivered to Mrs. Mary Monett?

Answer. I know of no such letter having been written by A. C. Fletcher, and delivered either by A. C. Fletcher or myself to Samuel H. Campbell for that purpose.

Interrogatory No. 16. You may state what you know of Wood Tick soliciting anybody to write such a letter and whether a letter

was written by anybody directed to Mary Monett and if so state all the facts relating thereto so far as you know them.

Answer. Wood Tick came to the Omaha mission where the allotments of land were being made and asked of the special agent permission to make a selection of an allotment for his sister, the wife of one of the Nemaha half-breeds. He was told that as his sister was of age it would be necessary for her to make her own selection and present her own claim to an allotment on the Omaha reservation. He thereupon said that he would go after his
930 sister. He may have asked me to write a letter for him to his sister and I may have written for him as I have written other private letters for other Indians but of this I have no distinct recollection. I think that this was in the summer of 1883. If other letters were written by other persons for Wood Tick to his sister I have no knowledge of them.

Objection is made by counsel for complainants who moves to strike out that portion of the last answer which is in the following words, "As I have written other private letters for other Indians."

Cross Interrogatories.

First cross-interrogatory. How many council meetings of the Omaha tribe of Indians were held during the years 1883 and 1884?

Answer. I have no recollection of the number.

2nd cross-interrogatory. If your answer to #9 is in the negative, what is it that now causes you to remember what took place at those council meetings and when and where were the council meetings held?

Answer. I remember because I was clerk of all the council meetings which I attended. Council meetings were held at various times and places but mostly at the agency. A council meeting was held by the Omaha council on May 23rd, 1883 with Special Agent A. C. Fletcher, at the carpenter and blacksmith shop on the Omaha reservation at which the council, in speeches made by each individual member, finally disposed of the Nemaha half-breed
931 question by rejecting the claims of all the Nemaha half-breeds excepting all those who had already been allotted in 1870. If the Monett case was considered at any subsequent councils I have no recollection of it.

Adjourned until Saturday September 27th, 1902 at 2 o'clock p. m. the hour for closing business having arrived.

September 27th, 1902, pursuant to the adjournment of September 26th the cross-examination of the witness was resumed.

3rd cross interrogatory. When and where were the council meetings held that you have testified to in answer to interrogatories #10 and #11?

Answer. I testified to no council meetings.

4th cross interrogatory. Are you positive you were present at all of the council meetings of the Omaha tribe of Indians at which discussions as to permitting Mary Monett or the Monett family to receive allotments of land upon the Omaha reservation were discussed?

Answer. There might have been council meetings held at which the Mary Monett case was discussed and at which I was not present.

5th cross interrogatory. Might there not have been council meetings at which you were not present when Wood Tick made a request to the members of the council that Mary Monett or the Monett family be given land upon the Omaha reservation and that the council gave its consent by the holding — of their hands?

932 Answer. Yes.

6th cross interrogatory. As interpreter for A. C. Fletcher, how many documents were you called upon to write for her?

Answer. I do not recollect the number.

7th cross interrogatory. Did you write any letters at all under the direction of the council at any of these meetings?

Answer. No sir.

8th cross interrogatory. Who were the persons at the council meeting held at the mission and which you have testified to in answer to interrogatory # 13?

Answer. I testified to no council meetings at the mission.

9th cross interrogatory. Who were present at this meeting at the mission from the Omaha tribe of Indians?

Answer. I testified to no council meeting at the mission.

10th cross interrogatory. State whether or not there were other persons besides the council and the tribe present? If so, give their names.

Answer. I testified to no council meetings at the mission.

933 11th cross-interrogatory. Did you see Samuel Campbell there?

Answer. I testified to no council meeting at the mission.

12th cross-interrogatory. State whether or not Anna Cabana was there?

Answer. I testified to no council meeting at the mission.

13th cross-interrogatory. State whether or not Artemesia Frost and Leonard Frost were there?

Answer. I testified to no council meeting at the mission.

14th cross-interrogatory. If your answer to #14 is in the negative why do you now say that you never wrote a letter which was dictated by the council requesting Mary Monett or the Monett family to come to the Omaha reservation and receive an allotment of land?

Answer. Because I never wrote any letters at any of these council meetings at the dictation of the council.

15th cross-interrogatory. If several witness- should testify that you did in fact write such a letter and that it was signed by A. C. Fletcher, what would your answer be?

Answer. I would say that the council dictated no such letter to me.

934 16th cross interrogatory. If your answer to interrogatory # 16 is that Wood Tick did ask some one to write such a letter, you may state whether or not your information is from seeing the letter or is it from hearing of it from some one else?

Answer. I have answered this in the direct interrogatory # 16.

17th cross interrogatory. You will please state only such information as you know from your own personal knowledge and not from statements of others.

Answer. I have done so.

NOTE.—Council for plaintiffs desires the record to show that the witness appeared with copies of the direct and cross interrogatories in his possession which he admitted had been furnished him prior to the date of examination by the attorney for the defendant-, and council for plaintiffs reserves all rights of objection on account thereof which may properly be made on the trial of the above entitled cause.

FRANK LA FLESCHE.

I, Anson S. Taylor a notary public in and for the District of Columbia do hereby certify that Frank La Flesche was by me first sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed as above set
935 forth, was reduced to writing by John E. Lansdale, stenographer and typewriter, who is not interested in this suit, in my presence, and in the presence of the witness, and was subscribed by the said witness in my presence, and was taken at the time and place in the annexed stipulation specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit; and said deposition was commenced at the time in said stipulation specified, and continued by adjournments from day to day as above stated.

In witness whereof I hereunto set my hand and notarial seal this 27th day of September, A. D. 1902.

[SEAL.] A. S. TAYLOR.

Costs of taking deposition, $12.50. Not paid.

Endorsed: Filed Oct. 2 1902 Geo. H. Thummel, clerk.

936 Thereupon afterwards, to-wit: at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, *and duly signed and filed in said case*, and entered of record in Journal "1" of said court, to-wit:

MITCHELL MONETTE, DAVID MONETTE, JENNIE M. Arnold, and Cassie M. Karch, Complainants,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Alfred Hallowell, Defendants.
Doc. Y, No. 364. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainants.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

937 Thereupon afterwards, to-wit: on the 13th day of October, 1903, an assignment of errors was filed in said case, which said assignment is in the words and figures, following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, Cassie M. Karch, and Jennie M. Arnold, Complainants,
v.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.
Docket T, No. 364. Assignment of Errors.

Comes now the complainants in the above entitled cause and assign the following errors in the record and proceedings in said cause as follows:

First. The court erred in finding and determining that Mary Monette received an allotment of land in the Nemaha reservation and was for that reason debarred from claiming a further allotment upon the Omaha reservation.

Second. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, made July 15, 1830, as meaning and intending that the taking of an allotment of land by a member of such tribe pursuant to article 10 of said treaty thereby extinguished the claim of such Indian to a further allot-

ment of land or further allotments or benefits in the tribal property as a member of such tribe.

Third. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, of July 15, 1830, as meaning and intending that half-breed members of the tribe who secured allotments of land in severalty in the Nemaha reservation under the terms of said treaty are not entitled to a second allotment under the act of 1882, although at the time of its passage they were residing on the reservation in the tribal relation.

938 Fourth. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Fifth. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Sixth. The court erred in holding that the complainants were not members of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Seventh. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Eighth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

939 Ninth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Tenth. The court erred in adjudging and determining that Mary Monette at the date of her death was not vested with the title to the land she was occupying in such sense that her death devolved or vested any title thereto in her heirs.

Eleventh. The court erred in holding and determining that Mary Monette at the time of her death was not entitled to claim and have allotted to her the land described in plaintiff's bill of complaint, to-wit: The west half of the south west quarter of section thirteen (13), and the east half of the south east quarter of section fourteen (14), all in township twenty-five (25), north, of range sixth (6) east of the 6th P. M. and that such described property did not vest in com-

plainants the heirs at law of said Mary Monette, at the time of her death.

Twelfth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainants.

Thirteenth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainants.

Wherefore, complainants pray that said decree be reversed and that complainants be restored to all things lost by reason thereof.

MITCHELL MONETTE,
DAVIS MONETTE,
CASSIE M. KARCH,
JENNIE M. ARNOLD,
Complainants,
By THOMAS L. SLOAN, &
CHAS. E. CLAPP
Their Attorneys.

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

940 Thereupon, to-wit: on the said 13th day of October, 1903, a petition for appeal was filed in said case, which said petition is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, DAVID MONETTE, Cassie M. Karch, and Jennie M. Arnold, Complainants, v. THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, and Alfred Hallowell, Defendants.	Docket T, No. 364. Petition for Appeal.

Comes now the complainant- in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant- alleges, grievous injury to *this* complainant-, and complainant- conceives themselves to be aggrieved and prejudiced by the various orders and rules of the court in said cause and allege divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainants further show to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors com-

plained of has been duly filed in said cause in the manner provided by law.

941 Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

MITCHELL MONETT,
DAVID MONETTE,
CASSIE M. KARCH,
JENNIE M. ARNOLD,
Complainants,
By THOMAS L. SLOAN &
CHAS. E. CLAPP,
Their Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

Thereupon, to-wit: on the said 13th day of October, 1903, a bond was filed in said case, which said bond is in the words and figures following, to-wit:

942 364, T.

Know all men by these presents, that we, Mitchell Monett David Monett, Jennie M. Arnold and Cassie M. Karch, John H. Kuhn & Thomas L. Sloan are held and firmly bound unto The United States of America and Alfred Hallowell in the full and just sum of one hundred dollars to be paid to the said The United States of America & Alfred Hallowell heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Mitchell Monett, David Monett, Jennie M. Arnold & Cassie M. Karch plaintiff- and The United States of America & Alfred Hallowell defendant- judgement was rendered against the said Mitchell Monette *et al.* and the said The United States of America & Alfred Hallowell *has* obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America & Alfred Hallowell citing and admonishing them to be and appear in the

Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Mitchell Monette David Monette, Jennie M. Arnold and Cassie M. Karch shall prosecute said appeal to effect, and answer all costs if *he* fail to make good *his* plea, then the above obligation to be void, else to remain in full force and virtue.

MITCHELL MONETTE.
DAVID MONETTE.
JENNIE M. ARNOLD &
CASSIE M. KARCH. [SEAL.]
JOHN H. KUHN. [SEAL.]
THOMAS L. SLOAN. [SEAL.]

Sealed and delivered in presence of—
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

943 Thereupon afterwards, to-wit: on the said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

944 The United States of America to the United States of America, Charles P. Mathewson, and Alfred Hallowell, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Mitchell Monette, David Monette, Cassie M. Karch, and Jennie M. Arnold are appellants and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] # 2005. No. 364. United States circuit court, district of Nebraska. Mitchell Monette *et al. vs.* United States, *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

944*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Charles P. Mathewson and Alfred Hallowell, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

944*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

945 Thereupon afterwards, to-wit: on the 19th day of April 1901, an amended bill of complaint was filed in said case, which said amended bill is in the words and figures to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CASSIE M. KARCH, Complainant, *vs.* THE UNITED STATES OF AMERICA, NICE DAY Hallowell, a Minor, and Charles P. Mathewson, Defendants.	No. 365, Doc. T. Amended Bill of Complaint.

To the honorable the judges of the United States circuit court for the district of Nebraska:

Your oratrix brings this her bill of complaint and says that she is of what is known as mixed blood of the Omaha tribe of Indians and is a lineal descendant of Lata-da-we, who was an Indian woman of the full blood and a member of the Omaha tribe of Indians, that Lata-da-we intermarried with one Francis Bono and that they maintained tribal relations with the Omaha tribe and maintained their domicile upon the Omaha reservation and maintained tribal relations there so long and so far as any tribal relations have been maintained by said tribe, and Lata-da-we has participated in the property and other rights of said tribe, and has been recognized by the said tribe and the members thereof as a member of said tribe and entitled to all its rights and privileges.

Further complaining your oratrix says that on the 16th day of Marcg, A. D. 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands
946 in lieu whereof it received its present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including Lata-da-we and her children All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large vol. 10, page 1043, to which for greater certainty your oratrix refers.

And your oratrix further shows that on the 6th day of March A. D. 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14, page 667, to which for greater certainty your oratrix begs to refer.

And further showing your oratrix says that on the 7th day of August A. D. 1882, an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such

other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person under eighteen years of age one sixteenth of a section. That all allotments should be *selected by the Indians*, heads of families selecting for their minor children and the agent selecting for each orphan child. All
947 of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large, vol. 22, page 431, to which for greater certainty your oratrix refers.

Your oratrix further shows that the said tribe gave their consent to the operation of said act of Congress and that all allotments were made under the provision of said act in December 1884 and at subsequent times since.

Your oratrix further says that on the 3rd day of March A. D. 1893, an act of Congress was passed amending or extending the act of August 7th, 1882, that with the consent of the Omaha tribe of Indians expressed in open council further allotments should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893, but increased allotments were provided from the residue lands after fulfilling the provisions of the act of 1882. That consent of the Omaha tribe was given in open council May 1899, and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimants.

And your oratrix further shows that her mother, Mary Monette, was the child of Francis Bono and Lata-da-we, who was as herein above set forth an Omaha Indian woman and a member of said tribe.

That she lived among the Omaha Indians a number of
948 years prior to her death and was recognized by them as one of their own blood. That she removed to the present reservation upon receipt of a letter from the special allot-ing agent in which she was notified that the tribal council had requested that she, Mary Monette and her family, be allotted land with other members of the tribe, which notice was sent to her through a special messenger but was not received until after the word of allotting the lands had been completed. That as soon as the notice was received Mary Monette and her family removed to Omaha reservation and selected land. That your oratrix, Cassie M. Karch selected for herself as the head of a family 160 acres of land described as follows:

The S. W. ¼ of section 12, township 25 north and range 6 east of

the 6th P. M. in Nebraska. Your oratrix has been refused an allotment of said land by the Interior Department.

That the said described land is a part of the lands referred to in the treaties and act of Congress herein above referred to. That no person or persons claimed the land when first selected and marked for your oratrix in accordance with the laws relating thereto. That your oratrix is in possession of said lands and has made valuable improvements thereon. That your oratrix is a member of said Omaha tribe of Indians by blood and descent, and also in accordance with the customs, rules and regulations of said tribe, and said relationship and membership has never been terminated. That under provisions of the act of Congress of March 3rd, 1893, new and additional allotments of land have been made to members of the Omaha tribe and during the pendency of this suit an assignment of land has been made to the following named person:

To Nice Day Hallowell, a minor daughter of Simeon Hal-
949 lowell, the N. ½ of S. W. ¼ of section 12, township 25 north range 6 east.

That said pretended claim arises under the act of 1893 as approved by the Omaha tribe of Indians in May 1899. Your oratrix avers no rights were acquired by the said Nice Day Hallowell to the land assigned to her.

That owing to such assignment and alleged claim thereunder she is a necessary party to this suit.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioners of Indian Affairs to make leases for the Indians who hold allotments of land, to place in possession the allottee or lessee, and that he threatens to place into possession either the allottee hereinbefore named or her lessee to the great and irreparable damage of the complainant who is now in possession.

That because of the position of said Charles P. Mathewson, his claim or authority over the land in controversy and his threats that he will remove your oratrix from the land make him a necessary party to this suit.

And your oratrix furthes shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotments of land under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take

cognizance of any action, suit or proceeding arising within
950 their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty. The said act further provided that a judgment or decree of any such court in favor of any

claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305, which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your oratrix begs to refer.

Your oratrix further states that the defendant The United States of America claims that by virtue of the 4th art. of the treaty of March 6th, 1865, the assignment to be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood "including their half breed and mixed blood relatives now residing with them."

The defendant, The United States, claims that your oratrix and her ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your oratrix admits that she and her ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation and the rights of allotment under the treaty of March 6th, 1865, nor their rights to allotment under the act of Congress of August 7th, 1882.

951 That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1870, and approved by the Secretary of the Interior January 26th, 1871, contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to; that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882 who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agents, the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation, but who at all times and at the

time of the treaty of March 6th, 1865, and ever since resided away from the reservation.

Your oratrix further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignment provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and
952 assignment was granted to all members of the tribe alike.

Your oratrix further states that the defendant, The United States, claims that the complainant or her ancestors have received allotments of land under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotments under the policy of the Indian office your oratrix is not entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your oratrix admits that her ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th 1830, as a half breed member of the Omaha tribe of Indians, that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by her ancestor nor given to her ancestor in consideration of the relinquishment of any other right- than those to which she was entitled on the Nemaha reservation.

Numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th 1830, sums of money, which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provision of the act of Congress, section 6th, ch. 66, of the third session of the 33rd Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830 have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th, 1882; that your oratrix has not in any manner assigned or
953 relinquished her right or claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians, neither has the United States by the executive department of the Government or by the enactment of any law authorized your oratrix or her ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of this tribe has been accepted or approved of by the United States or by any of its officers.

Wherefore your oratrix shows to your honors that she is without a remedy at law and remediless in the premises unless relieved by your honors in this court of equity and she therefore prays the aid of the court in the premises and that the said defendants, The United States of America, Nice Day Hallowell, by her next friend, Simeon Hallowell, and Charles P. Mathewson may answer your oratrix' bill

but without oath, answer under oath being expressly waived. That the patent issued to Nice Day Hallowell be ordered and decreed null and void and that the selection made by Cassie M. Karch be decreed her allotment prior and superior to the patented claim of Nice Day Hallowell, and that your oratrix and heirs be decreed entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your oratrix further prays for a preliminary order of injunction against the defendants Nice Day Hallowell and Charles P. Mathewson enjoining and restraining each of them their agents and employés from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and for such further and other relief as may seem just and proper.

954 And so may it please your honors to grant unto your oratrix the most gracious writ of subpœna to be issued under the seal of this court directed to the United States of America, Nice Day Hallowell, by her next friend, Simeon Hallowell, and Charles P. Mathewson, therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Council.*

Endorsed: Filed Apr. 19 1901 Geo. H. Thummel, clerk.

955 Thereupon afterwards, to-wit: on the 31st day of July, 1901, an answer was filed in said case, which said answer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CASSIE M. KARCH, Complainant, *vs.* THE UNITED STATES OF AMERICA, NICE Day Hallowell, a Minor, and Charles P. Mathewson, Defendants.	Doc. T, No. 365. Answer to Amended Bill of Complaint.

The answer of The United States of America, Nice Day Hallowell, a minor, and Charles P. Mathewson, defendants, to the amended bill of complaint of Cassie M. Karch, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefits and advantage of

exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer, say :

1. These defendants deny that Mary Monette, the mother of the complainant, is or ever was a member of the Omaha tribe of Indians of Nebraska; and deny that the complainant or her ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska; and deny that they ever participated in the benefits and other rights of the said tribe; and deny that
956 they were recognized by the United States as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainant claim- to be a descendant of Mary Monette, and that the said Mary Monette was the daughter of Latadawe, who had intermarried with one Francis Bono, and the defendant-avers that the said Francis Bono was a free born white man and a citizen of the United States, and that the said Mary Monette (*née* Bono) took the status of her father, and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; and that the said Mary Monette lived with her parents in Richardson county, State of Nebraska, and in that vicinity, but not on the Omaha reservation up until the year —, when she intermarried with one —— Monette, who was a free born white man and a citizen of the United States.

That there *was* born of the said —— Monette and his wife Mary Monette the following children: Mitchell Monette, David Monette, Jennie M. Arnold *nèe* Monette, Cassie M. Karch *née* Monette and which children, in law and in accordance with the rulings of the Interior Department and its government and control of Indian affairs, took the status of their father, and thereby became and were white persons and citizens of the United States and were not and never became members of the Omaha tribe of Indians; and that the said parents together with their said children, continued to live in Richardson county, State of Nebraska, and in that vicinity until after the approval of the act of Congress, August 7, 1882; and that the said Mary Monette came to the Omaha reservation about the year 1892, with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

957 2. These defendants for further answer aver that the complainant and her ancestors, did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives

then residing with the Omaha tribe of Indians, and which by these terms excluded the Monette family, being only mixed Indian blood, and not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said Monette family was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified
958 to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians, and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the Monette family or their ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the Monette family, the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say, that after the act of Congress of August 7, 1882, (22 U. S. Stats. at Large, p. 341) the said Monette family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands; and these defendants deny that the tribal council of the Omaha Indians ever requested that lands be allotted to the Monette family; and deny that the Monette family were requested by letter or otherwise, from the United States allotting agent, to come to the reservation, but to the contrary aver that the first allotment of lands under the act of 1882, was completed in the year 1884; and that the Monette family did not come to the vicinity of the Omaha reservation until the year 1892.

That the Omaha Indians on the said reservation manifested the most determined opposition to the Monette family, and other mixed

blood Indians of that class, being allowed to participate in the distribution of the land, and from time to time individual
959 cases were reported to the department by the special agent, charged with the work of allotting the lands for decision, as to the right of the parties to receive allotment.

4. As showing the position taken by the Interior Department in deciding the cases of the absentee mixed bloods, the following is taken from the ruling of the department dated September 13, relating to Celestine B. Kuhn, a member of the Barada family, the members of which family are similarly situated to the complainant herein, and have like suits pending, claiming the right to allotments of lands.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half — mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe
960 under date of December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestina Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or

more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the In-
961 dians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

H. PRICE,
Commissioner.

The department also made like ruling in the case of Euphrasia Peters, another of the mixed blood claimants of like class.

The last mentioned case was reported to the department by A. C. Fletcher, special U. S. Indian agent, under date of July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to
962 lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council

and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born upon the duly certified roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants for further answer aver that notwithstanding the ruling of the Department of the Interior above set forth,
963 many half-breed and mixed blood Indians insisted in coming and remaining on the lands of the reservation, and as a result thereof, the members of the Omaha tribe of Indians caused a petition to be prepared and transmitted to the Interior Department under date of March 19, 1888, in which they protested against the absentee half and mixed blood Indians coming upon the reservation and claiming the right to an allotment of lands, and requested the Interior Department to take action to remove all intruders from the lands of the reservation.

That the Commissioner of Indian Affairs acting on the said petition and protest, did under date of November 14, 1888, make his report to the Secretary of the Interior and requested authority to remove said mixed blood claimants from the said reservation, and that afterward on the 5th day of December 1888, the Secretary of the Interior directed the removal of the said mixed blood claimants from the said reservation, and which said order and judgment is as follows.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who *were provided with lands by them on the Nemaha reservation, and who* were excluded by them in their treaty of 1865, from taking land on the Omaha reservation,

and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though
964 a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865 (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882, (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians,
965 you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

6. These defendants for further answer avers that under article 10, of the treaty of July 15, 1830 (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to complainant's ancestor for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the

rights of the ancestor and his descendants including complainant were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

7. These defendants further aver that the preference right to select lands for allotment under the act of Congress, August 7, 1882, (22 U. S. Statutes at Large, 342) is confined by section (5) of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the treaty with the Omahas concluding March 6, 1865, and Monette family had not received and were not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof, the said Monette family did not have and could not acquire
966 any such interest in the lands described in the amended petition as would give them a preference over other Indians in the selection of land for allotment.

8. And these defendants for further answer say that the complainant was not and is not the head of a family, and is not entitled to claim by way of allotment, the 160 acres of land described in the amended bill of complaint, but her right to allotment, if any she had, would be limited under the law to 80 acres of land.

9. These defendants for further answer aver that the complainant did not select for allotment, and did not occupy or make any improvements on any of the lands described in the amended bill of complaint; and the defendants further aver that the complainant never lived upon the Omaha reservation until after the act of 1893, and never selected, improved, or cultivated any land whatsoever, upon the Omaha Indian reservation, and is not entitled to have or select any lands upon the Omaha Indian reservation for allotment.

10. That the said United States allotting agent did find upon investigation that the said complainant did not and never had selected, occupied or improved the N. ½ of the S. W. ¼ of section 12, township 25, range 6, and said United States allotting agent further found that the land last above described had been selected and reserved by Simeon Hallowell for his daughter Nice Day Hallowell, and that the said Hallowell had continued to claim said land for his daughter, and occupied, cultivated and improved the same from the year 1891, down to the date of allotment; and the said United States allotting agent did make an allotment of the said N. ½ of the S. W. ¼ section 12, township 25, range 6, to the said Nice Day Hallowell and thereafter made his official report to the Commissioner of Indian Affairs of said allotment above described, and which said allotment was subsequently approved by the Commissioner of Indian Affairs, and by the Secretary of the Interior, and patent
967 therefor has been issued to the said allottees under date of April 1900, and which said allotment was made and said patent issued in the regular and due course of business.

These defendants further aver that the complainant herein, did not have any prior or separate or vested right to the lands so pet-

ented to the said allottees respectively, and that the said allotments to them and the said patents to them, were made in all respects in conformity to law.

These defendants further aver that the land at present occupied by the complainant is the S. ½ of the S. W. ¼ of section 12, township 25, range 6, east, and which land has been reserved for the complainant pending this litigation, and is a part of the land described in the next paragraph of this answer.

11. And these defendants further aver that the United States allotting agent reserved for the Monette family pending this litigation and subject to the result thereof, the following land to-wit: The N. E. ¼ of section 13, township 25, north of range 6 east; the E. ½ of the N. E. ¼ of section 14, township 25, north of range — east; the S. ½ of the S. W. ¼ of section 12, township 25, north of range 6 east; the S. E. ¼ of section 10; the N. E. ¼ of section 15, the N. ½ of the S. E. ¼ of section 14, the N. W. ¼ of the S. W. ¼ of section 11, the E. ½ of the S. W. ¼ of section 10, the N. W. ¼ of the S. W. ¼ of section 10, and the S. W. ¼ of the N. W. ¼ of section 10, and the S. E. ¼ of the N. W. ¼ of section 10, and the S. E. ¼ of the N. E. ¼ of section 9, all in township 25, north of range 7 east, and which said reservation has been noted upon the maps in the office of the
968 Commissioner of Indian Affairs.

12. And these defendants say that if there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainants are entitled to the relief or any part thereof in the said complaint demanded.

JNO. L. WEBSTER.
W. S. SUMMERS,
U S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 31 1901 Geo. H. Thummel, clerk.

969 Thereupon afterwards, to-wit: on the 21st day of August, 1901 a stipulation of evidence was filed in said case, which said stipulation is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CASSIE M. KARCH, Complainant,
v.
THE UNITED STATES OF AMERICA, Nice Day Hallowell, a Minor, and Charles P. Mathewson, Defendants.
Doc. T, No. 365. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the complainant, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Mitchell Monette will testify that Cassie M. Karch came to the Omaha Indian agency in 1891, and makes claim to the S. W. ¼ of section 12, township 25, range 6, (which includes the 80 acres of land allotted to Nice Day Hollowell).

Thomas L. Sloan will testify that Cassie M. Karch selected said land in 1892, and plowed around it in 1893. That she lives with her husband on the S. ½ of the S. W. ¼ of section 12, (being the land reserved for her). That he surveyed the land in the spring of 1892 and there was no mark around it. That he surveyed for Cassie Karch.

970 In the Circuit Court of the United States for the District of Nebraska.

CASSIE M. KARCH, Complainant,
vs.
THE UNITED STATES OF AMERICA, Nice Day Hollowell, a Minor, and Charles P. Mathewson, Defendants.
Doc. T, No. 365. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Simeon Hallowell will testify that he made claim for his daughter Nice Day Hallowell of the N. ½ of the S. W. ¼ of section 12, township 25, range 6, about the year 1890. That he marked the land and plowed around it in the year 1892, and had it entered in the

tract book at the agency in the year 1892, and in the year 1893 marked said land over again; that he made no improvements on the land, but made a lease of it.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Attorney for Complainants.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

971 Thereupon afterwards, to-wit: on the 22nd day of September 1902, a replication was filed in said case, which said replication is in the words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

CASSIE M. KARCH
v.
UNITED STATES OF AMERICA ET AL. } No. 365, Doc. T.

The Replication of Cassie M. Karch, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant, saving and reserving to herself, all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer, of the defendants, for replication thereunto, saith that she doth and will aver, maintain and prove her said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

972 Thereupon afterwards, to-wit: at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal "1" of said court, to-wit:

CASSIE M. KARCH, Complainant,
vs.
THE UNITED STATES OF AMERICA, NICE DAY Hallowell, a Minor, and Charles P. Mathewson, Defendants.
} Doc. T, No. 365. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is, therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

973 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, assignments of error were filed in said case, which said assignment of errors is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CASSIE M. KARCH, Complainant,
vs.
THE UNITED STATES OF AMERICA, Nice Day Hallowell, and Charles P. Mathewson, Defendants.
} Docket "T," No. 365. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such per-

sons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

974 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Cassie M. Karch was not entitled to claim and have allotted to her the land described in plaintiff's bill of complaint, to-wit:

The southwest quarter of section twelve (12) in township twenty-five (25) north of range six (6) east of the 6th P. M.

975 Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

CASSIE M. KARCH,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

976 Thereupon, to-wit: on the 13th day of October 1903, petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CASSIE M. KARCH, Complainant,
vs.
THE UNITED STATES OF AMERICA, NICE DAY Hallowell, and Charles P. Mathewson, Defendants.

Docket "T," No. 365. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives *him*self to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States,
977 and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

CASSIE M. KARCH,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

And now, on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

Thereupon, to-wit: on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following to-wit:

978 365, "T."

Know all men by these presents, that we, Cassie M. Karch and John G. Gannon are held and firmly bound unto The United States of America and Nice Day Hallowell in the full and just sum of one hundred dollars to be paid to the said The United States of America

& Nice Day Hallowell heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Cassie M. Karch plaintiff and The United States of America & Nice Day Hallowell defendant- decree was rendered against the said Cassie M. Karch and the said Cassie M. Karch has obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The United States of America & Nice Day Hallowell citing and admohishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Cassie M. Karch shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

CASSIE M. KARCH. [SEAL.]
JOHN G. GANNON. [SEAL.]
——. ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

979 Thereupon afterwards, to-wit: on said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

980 The United States of America to The United States of America, Nice Day Hallowell, and Charles P. Mathewson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Cassie M. Karch is appellant and you are appellees, to show cause, if any there be, why

the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] 2004.—No. 365. United States circuit court, district of Nebraska. Cassie M. Karch *vs.* United States *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

980*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Niceday Hallowell, and Charles P. Mathewson, by handing to and leaving a true and correct copy thereof with John L. Webster their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

980*b* UNITED STATES OF AMERICA, *District of Nebraska, County of Douglas,* } *ss:*

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908.}

SUSAN M. BONNEVIER,
Notary Public.

981 No. 460, Doc. T.

Thereupon afterwards, to-wit: on the 9th day of October, 1901, an amended bill of complaint was filed in said case, which said bill is in the words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

To the honorable the judges of said court:

Thomas Barada brings this his amended bill of complaint against the United States of America, and Megra-shone Mathews, Harry Walker, Mary Walker, Henry Walker, Me-pe Walker, Little Girl Walker, Josephine McCauley, Elizabeth Dick, Joseph E. Blenkiron, Charles H. Chapman, Edward Farley and Charles P. Mathewson, aand thereupon your orator complains and says that the matter in dispute as hereinafter set forth exceeds the sum or value of two thousand dollars, exclusive of all interest and costs and that this action and dispute arises under the Constitution and laws of the United States and under certain treaties entered into under and by virtue of the said Constitution and laws of the United States as hereinafter more specifically set forth.

Your orator further says that he is a member of what is, and has long been known as, the Omaha tribe of Indians of Nebraska, being the tribe of Indians named and desi,nated as "Omahas" in the various statutes of the United States and in the treaties hereinafter set forth. That he is of what is known as mixed blood and a lineal descendant from Michael Barada and his wife, Taegleha Hacieneda, an Omaha Indian woman of the said tribe. That your orator and his ancestors back to the said Michael Barada and his wife, have continually maintained their domicile with the said tribe, and maintained tribal relations therewith so long and so far as any tribal relations existed or have been maintained by the said tribe. Your orator further says that he has participated in the property
982 and other rights of the said tribe and has been recognized by the said tribe and the members thereof, as a member of the said tribe and as entitled to all of the rights and privileges thereof.

Further complaining your orator says that on the 16th day of March, 1854, a certain treaty was made and entered into by and between the said United States and the Omaha tribe of Indians wherein and by which the said tribe ceded unto the United States certain lands situated in what is now the State of Nebraska, south of what has recently been known as the Omaha reservation, and in consideration of the cession of the said lands, the United States agreed to pay, and in fact did pay, unto the said tribe certain annuities for a certain period of years more fully set forth in said treaty,

and agreed to perform in addition thereto, certain covenants more fully set forth in said treaty.

And your orator further says that among other things it was provided in said treaty that the President of the United States might from time to time, under his discretion cause the whole of the lands of the said Omaha tribe, not by the said treaty ceded, or any part thereof that he might think proper, to be surveyed into lots and to assign unto such Indians of said tribe as might be willing to avail himself or themselves of the said privilege and who might — thereon as a permanent home, if a single person, over twenty-one years of age, one eighth of a section; to each family of two, one fourth of a section; to each family of three and not exceeding ten, one section; to each family over ten in number, one fourth of a section for each additional five members, and that the said President might at any time at his discretion, if said family or person desired to make
983 such location their permanent home, issue to said person, persons or family, a patent to said land under certain conditions in said treaty set forth. All of which things more fully appear in said treaty as published under and by virtue of the authority of the United States in the Statutes at Large, volume 10 on page 1043, to which for greater certainty your orator refers.

And further your orator says that on the 6th day of March, 1865, the United States made and entered into a certain treaty with the said tribe wherein and by which the latter did cede unto the United States a certain other tract of land north of what has been known as the Omaha reservation for a consideration in such treaty named. That said treaty provided among other things that the said tribe being desircus of promoting settled habits of industry and enterprise among themselves and of abolishing the tenure by which they then held their lands by assigning limited quantities thereof to the several members of the tribe, including their half or mixed blood relatives then residing with them, to be cultivated and used for their own individual use and benefit, it was then provided agreed and stipulated that the remaining portion of their then reservation should be set apart for such purposes and that out of the same there should be assigned to each head of a family not exceeding one hundred and sixty acres of land; and to each male member eighteen years of age and upward, without family, not exceeding forty acres of land; and including in every case as far as practicable a reasonable proportion of timber. That the whole of said land, assigned or unassigned, should constitute and be known as the Omaha reservation, that said division and assignment of land in severalty should be made under the direction of the Secretary of the Interior and when approved by him should be final and conclusive, that certificates should be issued by the Commissioner of Indian Affairs for the tract so as-
984 signed, specifying the names of the individuals to whom they have been assigned respectively, and that they were for the exclusive use and benefit of themselves, their heirs and de-

scendents, and that said tract should not be leased or otherwise disposed of except to the United States or other members of the tribe under such rules and regulations as might be prescribed by the Secretary of the Interior, and that they should be exempt from taxes, levy, sale or forfeiture until otherwise provided by Congress which said last mentioned treaty was published by authority of the United States in volume 14 of the Statutes at Large at page 667, to which for greater certainty your orator begs leave to refer.

And your orator says that by an act of Congress approved on the 7th day of August, 1882, entitled "An act to provide for a sale of a part of the reservation of Omaha tribe of Indians in the State of Nebraska and for other purposes," it was among other things provided that with the consent of the tribe expressed in open council the Secretary of the Interior should be authorized to cause to be surveyed, and if necessary sold, all that portion of the Omaha reservation lying west of a certain right of way thereupon granted by the said tribe to the Sioux City and Nebraska Railway Company; that said lands should be appraised in tracts of forty acres each and that thereupon the Secretary of the Interior should issue proclamation to the effect that unallotted land should be open to settlement, and that within one year after the date of said proclamation each *bona fide* settler upon said lands having made valuable improvements thereon should be entitled to purchase, according to said survey, at the appraised value of said lands, the said lands so occupied and improved by him. Said sale was to be for cash or payable
985 in three equal payments in one, two or three years from date of entry with interest at the rate of five per cent. per annum. That the proceeds of said sale after paying the expenses incident to carrying out the provisions of said act, should be placed to the credit of the said tribe in the Treasury of the United States, and should bear interest at the rate of five per cent. per annum which income should be expended for the benefit of the said Indians under the direction of the Secretary of the Interior.

And the said act further provides that the said Secretary of the Interior should be thereby authorized, either through the agent of the said tribe or such other person as he might designate, to allot the lands lying east of the said right of way granted to said railroad, in severalty to the Indians of said tribe; to each head of a family one quarter of a section; to each orphan child under eighteen years of age, one eighth of a section; and to each other person under eighteen years of age, one sixteenth of a section; that said allotment should be deemed and held in lieu of the allotment provided for in said treaty of March 6th, 1865, provided that any Indian to whom a tract of land had been assigned and certificate issued and who was entitled to the same under the provisions of the said treaty, if he had made valuable improvements thereon, and any Indian being entitled to said assignment and certificates under said treaty, has settled and made valuable improvements on the tract assigned to any Indian who never improved or occupied said land should

have the preference right to select a tract upon which his improvements were situated for the allotment provided for by said act, and that said allotment should be selected by the said Indians, heads of families selecting for their minor children, and the agent
986 selecting for each minor child. That upon the approval of the allotment as provided for by the Secretary of the Interior, he should cause patents to issue therefor in the name of the allottees, which patents should be of legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotments should have been made, and in case of his decease, for the sole use and benefit of his heirs according to the laws of the State of Nebraska, and that at the expiration of said period the United States will convey the same by patent to the said Indian or his heirs in fee discharge of said trust and free from all discharge or encumbrance, and that said lands should descend and be subject to partition in accordance with the laws of the State of Nebraska, after patents therefor should have been executed and delivered, and that upon the completion of said allotment and the patenting of the same to the said allottees, each and every member of said tribe should have the benefits of and be subject to the laws, both civil and criminal, of the State of Nebraska.

The said act further provides that the residue of the said lands lying east of the said right of way, after the making of the said allotments should be patented to the said tribe, which patents should be of the legal effect and declare that the United States does and will hold the land thus patented for the period of twenty-five years in trust for the sole use and benefit of the said tribe, and that at the expiration of the said period the United States will convey the same by patent to the said tribe in fee discharge of said trust, and free from all charge or encumbrance; provided that from the land thus patented to the tribe in common, allotments should be made
987 to each Omaha Indian child who might be born prior to the expiration of the time during which said lands should be held in trust and upon the same conditions as theretofore provided, which said last mentioned act was published by authority of the United States in volume 22 of the Statutes at Large at page 241, to which for greater certainty your orator begs leave to refer.

Your orator further shows that he is the son of Antoine Barada, who was in turn the son of Michael Barada and Taggleha Hacienda, who was as hereinbefore stated, an Omaha Indian woman and a fully admitted and recognized member of the Omaha tribe of Indians in Nebraska, as have been her descendants above named; that ever since 1880 and prior to that time your orator resided with the said Omaha Indian tribe on the Omaha reservation and *that* prior to 1880, and has ever since that time maintained his residence and domicile with the said tribe on the said Omaha reservation; that he has participated in the tribal property and has received an annuity of the said Omaha Indian tribe as a member thereof through

the agent in charge of the affairs of the said tribe, a duly commissioned officer and agent of the United States; that the children of your orator have been educated at the agency school maintained for the exclusive use and benefit of the youth of the Omaha tribe of Indians, it being admitted, recognized and decided by the tribal authorities and officers of the United States that the said children of your orator were entitled to the use and benefit of said school by reason of their Indian blood and relationship to the said Omaha tribe of Indians, acquired solely through their father, your orator; that by reason of such Indian blood and relationship to the said Omaha Indian tribe the children of your orator are still educated at the expense of the Government of the United States as Omaha Indian children by and through the endorsement of the officials of the United
988 States; that in the year of 1894 petitions were prepared by members of the said Omaha Indian tribe and signed by a majority of the members of said tribe and by members of the council of the said tribe, said petitions being directed to the Commissioner of Indian Affairs of the United States and asking that your orator be granted an allotment of land as an Omaha Indian and that he be allowed to participate in all of the benefits of the said tribe and be recognized as a member of the said Omaha Indian tribe, which in fact he was and still is. That in 1862 your orator was present on the said Omaha Indian reservation and together with his parents received an annuity of the distributive moneys of the said tribe, as an Omaha Indian.

Your orator therefore shows unto your honors that in the participation of the benefits above referred to and in the admissions and findings of the tribal authorities and the officers and agents of the United States he was duly recognized by the said authorities, officers and agents as an Omaha Indian.

And your orator further says that the officers of the United States have solicited him to send his children with them to eastern schools established and conducted solely for the use and benefit of Indians and that said officers, being empowered by the proper authority of the United States, have offered and proposed to take the children of your orator to schools provided for Indian children and there to educate them at the expense of the United States all because and by reason of the fact that your orator and his children are recognized Omaha Indians and entitled to the rights of such Omaha Indians by reason of their blood and relationship to the said Omaha Indian tribe; and that the United States has admitted and recognized the relationship of your orator to the said tribe in other and
989 numerous ways.

And your orator further says that he took possession of a tract of land on the Omaha reservation hereinbelow described, claiming the same by reason of his right to an allotment on the said reservation; that your orator broke the said land from wild, raw and untilled prairie and has placed thereon valuable improvements and has built and maintained thereon for his family a home,

and has solely through his own efforts and labor farmed and cultivated and occupied the said premises without objection on the part of the said tribe of Indians or of the officials of the United States or of anyone, and he is now together with his family of which he is the head, as such member of the Omaha tribe of Indians, under and by virtue of the foregoing treaties and acts of Congress hereinbefore described, occupying and has since 1889 occupied the following described lands within and a part of the said reservation situated in the county of Thurston and State of Nebraska, and within the jurisdiction of this court, to-wit: The northeast quarter of the northeast quarter of section twenty-two of township twenty-four north, of range eight east of the 6th P. M. and the west one half of the north-east quarter, and the south-east quarter of the north-west quarter, both of section four of township twenty-four north of range eight east of the 6th P. M., and the south-west quarter of section sixteen, and the northwest quarter of section twenty-one, and the north one-half of the south-west quarter of section twenty-one, all of township twenty-five north in range seven east of the 6th P. M. in Thurston county and the State of Nebraska.

That the said described land as above set forth is a part of the land referred to in the treaties hereinbefore set forth and
990 has been surveyed in accordance with the treaties and acts of Congress.

And your orator further shows unto your honors that no other person besides himself claims the right to the land so selected by your orator; that no selection of such lands has been made by any other person than your orator, except as hereinafter set forth; and that no certificate of such selection has been issued to any — for such lands, nor has any allotment thereof been made by the defendant, The United States of America, to any person whatsoever, nor has any patent issued accordingly to said lands except as hereinafter set forth; and that the defendant, The United States of America, has not opposed and does not oppose the claim of your orator to said lands by reason of such lands having been selected by others.

And your orator further shows that notwithstanding the facts as hereinbefore set forth and notwithstanding the fact that he is within and under the provisions of the laws referred to herein and entitled to an allotment of one hundred and sixty acres of such land for himself and that each of his children are entitled to an allotment of said land, the defendant, The United States of America, by and through its officers and agents refuses and neglects to make unto your orator the allotment of land to which he and his children or either of them are entitled, and that notwithstanding the rights of your orator to such an allotment, he is now and has been unlawfully denied the allotment or parcel of land to which he is and claims to be lawfully entitled by virtue of said treaties and acts of Congress and in that behalf your orator shows that the said defendant, The United States of America, notwithstanding the selection of the above described land by your orator, refuses through the Depart-

ment of the Interior to approve such selection of land so made
991 by your orator, although he has notified the said defendant,
The United States of America through its proper officers and agents that he has made such selection as was his right under and by virtue of said treaties and acts of Congress, and the said defendant, The United States of America, notwithstanding such selection and notification, refuses and has refused to cause the patent to issue for such allotment and selection in the name of your orator.

And your orator further shows that in accordance with the laws of the United States, the defendant, The United States of America, has detailed and appointed to the said Omaha tribe of Indians as agent of the United States of America, over what is known as the Omaha reservation, as hereinbefore described, Charles P. Mathewson, who is now in charge of the said land of the Omaha reservation including these lands in controversy now claimed by your orator, and that the said Charles P. Mathewson is now the person designated by the laws of the United States to superintend and supervise and make allotments of land to those members or former members of the Omaha Indian tribe entitled to such allotments under the foregoing treaties and statutes. And now the said Charles P. Mathewson and the Secretary of the Interior of the United States, as representing the defendant, The United States of America, refuse and neglect to make unto your orator the allotment of land to which he is entitled, and that notwithstanding his rights in the premises he is now and has been, unlawfully denied the allotment of the parcel of land to which he is entitled, and which he now claims, and that the defendant, The United States of America, refuses to make to him such allotment and refuses to issue to him a certificate and patent therefor to which he is entitled under the laws and treaties of The United States, notwithstanding the fact that under the said laws and treaties and
992 the practice hereto prevailing in the allotment of the said lands as adopted and pursued by the defendant, it is the duty of the agent assigned to the said tribe to issue to each member thereof, whether of mixed or full blood a certificate showing the location of the land selected by the said Indian and that thereupon it is and becomes the duty of the Secretary of the Interior to issue to such member a patent for the land so selected under the laws as hereinbefore set forth, and notwithstanding the fact that your orator has in all respects complied with the requirements, rules and regulations adopted and prescribed by the defendant, The United States of America, relating to the selection and allotment of the said lands.

And your orator further shows unto your honors that in accordance with an act of Congress of August 7th, 1882, as hereinbefore set forth, the consent of the Omaha tribe of Indians was given in open council in May, 1889, and thereupon assignments for allotments were made by a special agent under the direction of the Commissioner of Indian Affairs of the United States; that the instructions to said special agent directed that in making assignments, he should

respect the selections made by the parties who had cases pending in court where such selections were the first made to the land claimed and the subject of the litigation in court. That said special agent did not follow his instructions, but assigned a portion of such land without investigation as to prior claims or notice to claimants. That your orator gave to the defendant, The United States of America, and also to said special agent due and proper notice of his claim and a discription of the land selected by him which is hereinbefor-more fully set forth, and your orator further gave said special agent and the defendant, The United States of America, notice that
993 his claim to an allotment of the lands selected by him was the subject of litigation in the proper court at that time, which was prior to the making of any assignment by said special agent.

That said special agent contrary to his said instructions and to your orator's notice, assigned of the land claimed by your orator the southeast quarter of the northwest quarter of section four in township twenty-four, north, of range eight east, of the 6th P. M. to Mega-shone Mathews; and the northeast quarter of the southwest quarter of section sixteen in township twenty-five north, of range seven east of the 6th, P. M. to Harry W. Walker; and the west one half of the southwest quarter of section sixteen of township twenty-five north, of range seven east of the 6th P. M. to Mary Walker; and the southeast quarter of the southwest quarter of section sixteen in township twenty-five north of range seven east of the 6th P. M. to Henry Walker; and the northeast quarter and the northwest quarter of the northwest quarter of section twenty-one of township twenty-five in range seven east of the 6th P. M. to Me-pe Walker; and the south one-half of the northwest quarter of section twenty-one of township twenty-five north of range seven east of the 6th P. M. to Little Girl Walker; and the northeast quarter of the southwest quarter of section twenty-one of township twenty-five north of range seven east of the 6th P. M. to Josephine McCauley and the northwest quarter of the southwest quarter of section twenty-one of township twenty-five north of range seven east of the 6th P. M. to Elizabeth Dick, all of whom are Omaha Indians, which assignments were approved by the Secretary of the Interior of the United States and certificates accordingly issued to the said Omaha Indians who were at all times herein mentioned and now are citizens of the United States, and whose claims to the above described premises and
994 rights thereto were at all times junior and inferior to the claim of your orator to the said described lands. That after said assignments of land had been made to said Omaha Indians out of the premises claimed and held by your orator, leases were made on portions of said land by and through the authority of the United States and by Charles P. Mathewson as agent of the Omaha tribe of Indians, as follows: on the land assigned to Harry Walker, Mary Walker, Henry Walker, Me-pe Walker, as above set forth, from said Omaha Indians to Joseph E. Blenkiron and on the land assigned to

Little Girl Walker and Elizabeth Dick, as above set forth from said Omaha Indians to Charles H. Chapman and on the land assigned to Josephine McCauley as above set forth from said Josephine McCauley to Edward Farley, and that in accordance with the terms of said leases the rent therefrom is payable in semi-annual payments to Charles P. Mathewson, agent, for the use and benefit of the said pretended allottees, and that in accordance with the rules and customs of the office of Indian agent, said rent money is immediately paid to said defendants Harry Walker, Mary Walker, Henry Walker, Me-pe Walker, Little Girl Walker, Josephine McCauley and Elizabeth Dick by the said Charles P. Mathewson, agent.

That said defendants Harry Walker, Mary Walker, Henry Walker, Me-pe Walker, Little Girl Walker, Josephine McCauley, and Elizabeth Dick are entirely insolvent and irresponsible and if said rent moneys or any part thereof are paid to them or either of them the same will be wholly lost to your orator.

And your orator further shows unto your honors that under and by virtue of an act of Congress, approved on the 15th day of August, 1894, it was provided that all persons who are in whole or in
995 part of Indian blood or descent who are entitled to an allotment of land under any act of Congress or law of the United States, or who claim to be so entitled under any allotment or act or grant made by Congress or who claim to be unlawfully denied or excluded from any allotment or parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence, prosecute or defend any action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States; and that said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the rights of any person of whole or of mixed Indiad blood or descent, to any allotment of land under any law or treaty, and the said act further provides that a judgment or decree of any such court in favor of any such claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior of the United States, as if such allotment had been made, allowed and approved by him, and that the United States of America is, and may be made a proper party to such suit and proceeding, which said act of Congress was published by the authority of the United States in the 28th volume of the Statutes at Large on page 305, said act being amended by reënactment duly approved by the President of the United States on the 6th day of February, 1901, to which for greater certainty your orator begs leave to refer.

Your orator therefore shows unto your honors that he is without adequate remedy at law and without remedy in the premises unless relieved by your honors in this court of equity, and he therefore prays the aid of the court in the premises, and that said de-
996 fendant, The United States of America may appear and answer this bill of your orator, but without oath, answer under oath being expressly waived.

That it be ordered and decreed that your orator is entitled to have allotted to him the land described in this bill of complaint of your orator, and that the defendant, The United States of America be ordered and required to make and issue to your orator the certificate and patent to the above described lands as he shall be entitled to, as contemplated and provided by the foregoing treaties and acts of Congress, and to recognize in all respects the rights of your orator to and upon the lands now occupied by him and selected by him, for himself and as head of his family, and his rights thereto and the rights of his children under and by virtue of the laws of the United States and treaties, be forever established and that your orator and his children may be fully recognized as members of said tribe of Omaha Indians and that all of the benefits and privileges thereunto belonging may be granted to him and his family, and that selection and pretended assignments of land for allotment to Mega-shone Mathews, Harry Walker, Mary Walker, Henry Walker, Mepe Walker, Little Girl Walker, Josephine McCauley and Elizabeth Dick out of the premises selected and claimed by your orator be ordered annulled, vacated and canceled and that the said tenants of the same, Joseph E. Blenkiron, Charles H. Chapman, Edward Farley be immediately enjoined and restrained from paying the rents of the said lands, selected by your orator and leased by said tenants, to Charles P. Mathewson or to any of the above named Omaha Indians or to any person or persons until the settlement and determination of this controversy and until the final adjudication of the rights of your orator to an allotment of the said lands, and that your orator may
997 have such other and further relief as may be just and equitable, and so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court to be directed to the defendant herein and to the United States of America, therein and thereby commanding it on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court then and there to answer all and singular the premises and to stand and abide and to perform such orders and decreed therein as — this court shall seem meet.

BROME & BURNETT,
HARRY L. KEEFE,
Solicitors for Complainant.

THOMAS BARADA,
Complainant.

STATE OF NEBRASKA, }
County of Cuming, } ss:

Thomas Barada being first duly sworn on oath and according to law deposes and says that he is a resident of Thurston county in the State of Nebraska; that he is the complainant in the above amended bill of complaint; that he is acquainted with the facts as therein

stated; and that the statement of facts and allegations as therein contained and set forth are true.

THOMAS BARADA.

Subscribed in my presence and sworn to before me this 29th day of July, A. D., 1901, in the county and State aforesaid.

J. J. ELKIN,
Notary Public.

Endorsed: Filed Oct. 9 1901 Geo. H. Thummel, clerk.

998 Thereupon afterwards, to-wit: on the 26th day of September, 1902 an answer to amended bill of complaint was filed in said case, which said answer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

THOMAS BARADA, Complainant,
vs.
THE UNITED STATES OF AMERICA and Megra-shone Mathews, Harry Walker, Mary Walker, Henry Walker, Me-pe Walker, Little Girl Walker, Josephine McCauley, Elizabeth Dick, Joseph E. Blenkiron, Charles H. Chapman, Edward Farley, and Charles P. Mathewson, Defendants.

Doc. T. No. 460. Answer to Amended Bill of Complaint.

The answer of The United States of America, Megra-shone Mathews, Harry Walker, Mary Walker, Henry Walker, Me-pe Walker, Little Girl Walker, Josephine McCauley, Elizabeth Dick, Joseph E. Blenkiron, Charles H. Chapman, Edward Farley, and Charles P. Mathewson, defendants, to the amended bill of complaint of Thomas Barada, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer, say:

1. These defendants deny that the complainant is an Omaha
999 Indian and den*ies* that complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the

contrary, *this* defendant- avers that said complainant is a white man, and a citizen of the United States, and that his ancestors were white persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that complainant or his ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that *complainant or his ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that* they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

This defendant- for further answer avers that the complainant claims to trace his lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but *this* defendant- *is* not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to his proof in that regard.

That there was born to the said Michael Barada and his wife in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a free born white person, and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and
1000 was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha tribe.

That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vien continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years, until some time after the approval of the act of Congress of August 7, 1882, (22 U. S. Stats. at Large, 341) hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a son named Thomas Barada, (the complainant herein) and the said Thomas Barada was of but one fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of his father and became and was a white man and a citizen of the United States, and was not a member of the Omaha tribe of Indians and lived in the city of St. Louis, and was never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Thomas Barada, so being a white man and a citizen of the United States

taking the status of his father continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when he came to the Omaha reservation with his parents, with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

1001 2. *This* defendant- for further answer avers that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Thomas Barada, being only one sixteenth Indian blood, and he not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and *this* defendant further avers that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to

1002 the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or his ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. *This* defendant- further answering says: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plain-

tiff; and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States Indian agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880 December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Ma-garet Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whipperm, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedants or descendants of said parties, so far as I know their names" and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant.

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4. *This* defendant- further answering says: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher the United States special allotting agent, for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding
1004 the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date of December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celeste Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

1005 If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not — all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would

never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case. The case was stated as follows:

1006 "Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4 of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the

1007 new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these oursiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their — of 1865, whose names were born- upon the duly certified census roll of 1871, of their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. *This* defendant- further avers that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit: William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors, and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

1008 SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Out land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law,
1009 take the man away, we cannot feel sure that out own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our un-lotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claim, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

1010 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation,

and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865 (14 Statutes 668) was made. (The — article of which extended the benefits conferred thereby in respect to allotments to such only of their half — mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882,
1011 none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. *This* defendant- further avers that the said Ma-garet Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed

Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation. and upon their failure so to remove, said Indian agent was to report such fact to the Com-
1012 missioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors, and Frank Peters, to leave the said reservation, and that they informed said agent that they would nor do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs, repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as he was of that class.

This defendant- further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instructions to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are no- entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. *This* defendant- further avers that Margaret Sloan, Thomas L. Sloan, William Barada Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the pur-
1013 pose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which suits, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court

of the United States, for the district of Nebraska, entered a decree against the complainant- in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. These defendants for further answer aver that the complainant makes claim to the N. E. ¼ of the N. E. ¼ of section 22 and the N. E. ¼ of section 4, township 24, range 8 E. and which said lands have been reserved for the complainant pending the result of these litigations, and being lands upon which the complainant resides.

That the complainant also makes claim to the S. W. ¼ of section 16 and the N. W. ¼ of section 21 and the N. ½ of the S. W. ¼ of section 21 all in township 25, range 7, but which said lands in township 25, range 7 have been allotted and patented to other persons, defendants herein, whom the allotting agent and the Interior Department found had a prior and a better right to the selection of said lands. That the said complainant never occupied or im-
1014 proved any of the said lands in said township 25, range 7 E, allotted and patented to the defendants herein.

That the said complainant being the son of Josephine Vien, a full blood white woman, and her husband Antoined Barada, a descendant of Michael Barada, a full blood white man, was born on the Nemaha reservation in 1857 and was living with his said parents at the time when his father received an allotment upon the Nemaha reservation, and that the said complainant afterward married a full blood white woman in Richardson county, Nebraska, in the year 1885 and did not come to the Omaha reservation until the year 1888.

10. And these defendants say that if there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of *this* defendant, and *this* defendant- deni*es* that the said complainant is entitled to the relief or any part thereof in the said complaint demanded.

And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JNO. L. WEBSTER,
Sol. for Defendant-.

W. S. SUMMERS,
U. S. Attorney.

Endorsed: Filed Sep. 26 1902 Geo. H. Thummel, clerk.

1015 Thereupon afterwards, to-wit: on the 3rd day of October, 1902, a replication was filed in said case, which said replication is in the words and figures following, to-wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

THOMAS BARADA, Complainant,
vs.
THE UNITED STATES, Defendant. } No. 460, Docket T.

The Replication of Thomas Barada, Plaintiff, to the Answer of The United States of America, Defendant.

This repliant saving and reserving unto himself now and at all times hereafter, all, and all manner of benefit and advantage of exception which may be had and taken to the manifold insufficiencies of the said answer, for replication thereunto, say- that *they* will aver, maintain and prove *in* his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by the repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things the repliant does, and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray- as in and by his said bill of complaint he has already prayed.

H. C. BROME &
ANDERSON & KEEFE,
Solicitor- for Plaintiff.

Endorsed: Filed Oct. 3 1902. Geo. H. Thummel, clerk.

1016 Thereupon afterwards, to-wit: at the May term 1902 of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal "1" of said court, to-wit:

THOMAS BARADA, Complainant,
vs.
THE UNITED STATES OF AMERICA and Megra-shone Mathews, Harry Walker, Mary Walker, Henry Walker, Me-pe Walker, Little Girl Walker, Josephine McCauley, Elizabeth Dick, Joseph E. Blenkiron, Charles H. Chapman, Edward Farley, and Charles P. Mathewson, Defendants.
} Doc. T, No. 460. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxes at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902. Geo. H. Thummel, clerk.

1017 Thereupon afterwards, to-wit: on the 13th day of October, 1903 an assignment of errors was filed in said case, which said assignment is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

THOMAS BARADA, Complainant,
vs.
THE UNITED STATES OF AMERICA, Joseph E. Blenkiron, Edward Farley, Charles P. Mathewson, Harry Walker, Mepee Walker, Henry Walker, Little Girl Walker, Josephine McCauley, Megrashone Mathews, and Elizabeth Dick, Defendants.
} Docket T, No. 460. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such times, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the
1018 date of the passage of said act.

Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Thomas Barada and children were not entitled to claim and have allotted to them the land described in plaintiff's bill of complaint, to-wit: The north east quarter of the north east quarter of section twenty-two (22); the west half of the north east quarter of section 4, and the south east quarter of the north west quarter of section four (4), all in township twenty-four (24), north, of range eight (8), east; also the south west quarter of section sixteen (16); the north
1019 west quarter of section twenty-one (21), and the north half of the south west quarter of section twenty-one (21), all in township twenty-five (25) north of range seven (7) east.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendant and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

THOMAS BARADA,
Complainant,
By BROME & BURNETT,
His Attorneys.

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1020 Thereupon, to-wit:—on the said 13th day of October, 1903, a petition for appeal was filed in said case, which said petition is in the words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

THOMAS BARADA, Complainant, *vs.* THE UNITED STATES OF AMERICA, Joseph E. Blenkiron, Edward Farley, Charles P. Mathe-son, Harry Walker, Mepee Walker, Henry Walker, Little Girl Walker, Josephine McCauley, Megrashone Mathews, and Elizabeth Dick, Defendants.	Docket T, No. 460. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

1021 Wherefore complainants prays for the allowance of an appeal in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

THOMAS BARADA,
Complainant,
By BROME & BURNETT,
His Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903. Geo. H. Thummel, clerk.

Thereupon, to-wit: on the said 13th day of October, 1903, a bond was filed in said case, which said bond is in the words and figures following, to-wit:

1022 460, T.

Know all men by these presents, that we, Thomas Barada & Lot Sailors are held and firmly bound unto The United States of America, Mepee Walker, Little Girl Walker, Elizabeth Dick and Josephine McCauley, Mary Walker and Harry Walker in the full and just sum of one hundred dollars to be paid to the said The United States of America, Mepee Walker Little Girl Walker, Elizabeth Dick. Josephine McCauley, Mary Walker & Harry Walker heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Thomas Barada plaintiff and The United States of America, Mepee Walker, Little Girl Walker, Elizabeth Dick, Joseph- McCauley, Mary Walker & Harry Walker defendant- decree was rendered against the said Thomas Barada and the said Thomas Barada has obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The United States of America Mepee Walker, Little Girl Walker, Elizabeth Dick, Josephine McCauley, Mary Walker Harry Walker citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Thomas Barada shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

THOMAS BARADA. [SEAL.]
LOT SAILORS. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903, Geo. H. Thummel, clerk.

1023 Thereupon afterwards, to-wit: on said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1024 The United States of America to the United States of America, Joseph E. Blenkiron, Edward Farley, Charles P. Mathewson, Harry Walker, Mepee Walker, Henry Walker, Little Girl Walker, Josephine McCauley, Megrashone Mathews, and Elizabeth Dick, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Thomas Barada is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2003. No. 460 United States circuit court, district of Nebraska. Thomas Barada *vs.* United States, *et al.* Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

1024*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Joseph E. Blenkiron, Edward Farley, Charles P. Mathewson, Harry Walker, Mepee Walker, Henry Walker, Little Girl Walker, Josephine McCauley, Megrashone Mathews, and Elizabeth Dick, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1024*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, — full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

1025 Thereupon afterwards, to-wit: on the 9th day of October, 1901, amended bill of complaint was filed in said case, which said amended bill of complaint is in words and figures following, to-wit:

No. 461, Doc. T.

In the Circuit Court of the United States for the District of Nebraska.

To the honorable the judges of said court:

Mary Sailor brings this, her bill of complaint against the United States of America and Wallace Miller, Mary A. McCauley, Tah-egra-ha Canby, Michael Cooney, Joseph E. Blenkiron, Charles C. Maryott and Charles P. Mathewson, and thereupon your oratrix complains and says that the matter in dispute as hereinafter set forth exceeds the sum or value of two thousand dollars, exclusive of all interest and costs and that said action and dispute arises under the Constitution and laws of the United States and under certain treaties entered into under and by authority of the said Constitution and laws of the United States and are hereinafter more specifically set forth.

Your oratrix further says that she is a member of what is and has long been known as the Omaha tribe of Indians of Nebraska, being the tribe of Indians named and designated as the "Omahas" in the various statutes of the United States and in the treaties hereinafter set forth. That she is of what is known as mixed blood and a lineal descendant from Michael Barada and his wife, Taegleha Hacieneda,

an Omaha Indian woman and a member of said tribe. That your oratrix and her ancestors back to the said Michael Barada and his said wife, have continually maintained their domicile with the said tribe and have maintained the tribal relations therewith so long and so far as any tribal relations have existed or have been maintained by the said tribe of Indians.

Your oratrix further says that she has participated in the
1026 property and other rights of the said tribe and has been recognized by the said tribe and its members as a member thereof and as entitled to all of its rights and privileges.

Further complaining your oratrix says that on the 16th day of March, 1854, a certain treaty was made and entered into by and between the United States and the said Omaha tribe of Indians wherein and by which the said tribe ceded unto the United States certain lands in what is now the State of Nebraska, south of what has recently been known as the Omaha reservation and in consideration of the cession of said lands, the United States agreed to pay, and in fact did pay unto the said tribe certain annuities for a certain period of years more fully set out in said treaty, and agreed to perform in addition thereto, certain covenants more fully set forth in said treaty.

And your oratrix further says that among other things it was provided in the said treaty that the President of the United States might from time to time, under his discretion, cause the whole of the lands of the said Omaha tribe, not by said treaty ceded, or any part thereof that he might think proper, to be surveyed into lots and he might assign the same to such Indian or Indians of said tribe as might be willing to avail himself or themselves of the privilege and who might locate thereon as a permanent home, if a single person over twenty one years of age, one eighth of a section; and to each family of two, one fourth of a section; and to each family of three and not exceeding five, one-half of a section; and to each family of six and not exceeding ten, one section; and to each family of over ten in number, one-fourth of a section for each additional five members, and that the said President might at any time, at his discretion, if said person or family desired to make such location
their permanent home, issue to said person, persons or family,
1027 a patent of said land under certain conditions in the said treaty set forth. All of which matters and things more fully appear in said treaty as published under and by authority of the United States in the Statutes at Large, volume 10, on page 1043, to which for greater certainty your oratrix herein begs leave to refer.

And your oratrix further says that on the 6th day of March, 1865, the said United States made and entered into a certain treaty with the said tribe wherein and by which the latter did cede unto the United States a certain other tract of land north of what has since been known as the Omaha reservation for a consideration in such treaty named. Said treaty provided among other things that the

said tribe being desirous of promoting settled habits of industry and enterprise among themselves and of abolishing the tenure by which they then held their lands by assigning limited quantities thereof to the several members of the tribe, including their half or mixed blood relatives then residing with them, to be cultivated and used for their own individual use and benefit, it was therefore provided, agreed and stipulated that the remaining portion of their reservation should be set apart for such purposes and out of the same there should be assigned to each head of a family not to exceed one hundred sixty acres and to each male member eighteen years of age and upwards, without family, not to exceed forty acres of land, and including in every case as far as practicable a reasonable portion of timber. That the whole of said land assigned or unassigned should constitute and be known as the Omaha reservation, that said division and assignment of land in severalty should be made under the direction of the Secretary of the Interior and when approved by him should be final and conclusive, that certificates should be issued by the Commissioner of Indian Affairs for the tracts so assigned, specifying the name- of the individuals to
1028 whom they had been assigned respectively, and that the said lands were for the exclusive use and benefit of themselves, their heirs and descendants and that said tracts should not be leased or otherwise disposed of, except to the United States or other members of the tribe under such rules and regulations as might be proscribed by the Secretary of the Interior, and that they should be exempt from taxation, levy or forfeiture until otherwise provided for by Congress, which said last mentioned treaty was published by authority of the United States in volume 14 of the Statutes at Large at page 667, to which for greater certainty your oratrix begs leave to refer.

Your oratrix further says that by act of Congress approved on the 7th day of August, 1882, entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska and for other purposes," it was among other things provided that with the consent of said tribe expressed in open council, the Secretary of the Interior should be authorized to cause to be surveyed, and if necessary sold, all of that portion of the Omaha reservation lying west of a certain right of way thereupon granted by the said tribe through the said reservation to the Sioux City & Nebraska Railway Company; that said lands should be appraised in tracts of forty acres each and then the Secretary of the Interior should issue proclamation to the effect that unallotted lands should be opened to settlement, and that within one year after the date of said proclamation each *bona fide* settler upon said lands having made valuable improvements thereon should be entitled to purchase, according to said survey, at the appraised value of said land, the said land so occupied and improved by him. Said sale was to be for cash or payable in three equal payments in one, two or

three years from the date of entry with interest at the rate of
1029 five per cent. per annum.

That the proceeds of said sale, after paying the expenses incident to carrying out the provisions of said act, should be placed to the credit of said tribe in the Treasury of the United States and should bear interest at the rate of five per cent. per annum, which interest should be expended for the benefit of said Indians under the direction of the Secretary of the Interior. And the said act further provides that the said Secretary should be thereby authorized either through the agent of said tribe or such other person as he might designate to allot the lands lying east of the said right of way granted to said rail road, in severalty to the Indians of said tribe; to each head of a family, one quarter of a section; to each orphan child under eighteen years of age, one eighth of a section; to each other person under eighteen years of age, one sixteenth of a section; and that such allotment should be deemed and held in lieu of the allotments provided for in said treaty of March 6th, 1865, *provided* that any Indian to whom a tract of land had been assigned and a certificate issued and who was entitled to the same under the provisions of said treaty if he had made valuable improvements thereon, and any Indian, who being entitled to said assignment and certificate under said treaty, had settled and made valuable improvement upon the tract assigned to any Indian who had never improved or occupied said land, should have a preference right to select a tract upon which his improvements were situated for the allotment provided for by said act, and that said allotments should be selected by the Indians, heads of families selecting for their minor children and the agent selecting for each minor child. That upon the approval of the allotment as provided by the Secretary of the Interior, he should cause patents to issue therefor in the names of the allottees, which patents should be
1030 of the legal effect and declare that the United States does and will hold the land that is so allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment should have been made, and in case of his decease, for the use and benefit of heirs at law according to the laws of the State of Nebraska, and that at the expiration of said period, the United States will convey the same by patent to the said Indian or his heirs in fee discharge- of said trust and free of all discharge or incumbrance, and that said lands should descend and be subject to partition in accordance with the laws of the State of Nebraska, after patents therefor should have been executed and delivered, and that upon the completion of said allotment and the patenting of the same to the said allottees, each and every member of said tribe should have the benefit of and be subject to the laws, both civil and criminal of the State of Nebraska.

The said act further provides that the residue of said land lying east of said right of way, after the making of said allotments should be patented to the said tribe, which patents should be of legal effect

and declare that the United States does and will hold the land thus patented for the period of twenty-five years in trust for the sole use and benefit of said tribe, and that at the expiration of the said period the United States will convey the same by patent to the said tribe in fee discharge- of said trust, and free from all charge or encumbrance; provided that from the lands thus patented to the tribe in common, allotments should be made to each Omaha Indian child who might be born prior to the expiration of the time during which said lands should be held in trust and upon the same condition as theretofore provided, which said last mentioned act was published by authority of the United States in volume 22 of
1031 the Statutes at Large at page 241, to which for greater certainty your oratrix begs leave to refer.

Your oratrix further shows that she is the daughter of Euphrasia Peters, who was in turn the daughter of Antoine Barada, and that the said Antoine Barada was the son of Michael Barada and Taegleha Haceineda, who was, as hereinbefore stated, an Omaha Indian woman and a fully admitted and recognized member of the Omaha Indian tribe in Nebraska, as have been her descendants above named; that ever since 1880 and prior to that time your oratrix resided with the said Omaha Indian tribe on the Omaha reservation and had prior to 1880 and has ever since that time maintained her residence and domicile with the said tribe on the said Omaha Indian reservation; that she has participated with the tribal property and received an annuity of the said Omaha Indian tribe through the Indian agent in charge of the affairs of said tribe, a duly commissioned officer and agent of the United States; that the children of your oratrix have been educated at the Indian agency school maintained for the exclusive use and benefit of the youth of the Omaha tribe of Indians it being admitted, recognized and decided by the tribal authorities and the officers of the United States that the said children of your oratrix were entitled to the use and benefit of said school by reason of their Indian blood and relationship to the said tribe of Indians. That the children of your oratrix are still educated at the expense of the Government of the United States as Omaha Indians with the consent of and by and through the endorsement of the officials of the United States; that during the year 1894 petitions were prepared by members of the Omaha Indian tribe and signed by a majority of the members of said tribe and also by ten of the then twelve councilmen of the said Omaha Indian tribe, said petitions
1032 being directed to the Commissioner of Indian Affairs of the United States and asking that your oratrix be granted an allotment of land as an Omaha Indian woman and that she be allowed to participate in all of the benefits of the said tribe and that she be acknowledged and recognized as a member of the said Omaha Indian tribe.

Your oratrix therefore shows unto your honors that in the participation of these benefits and in the admissions and findings of the tribal authorities and officers of the United States she was duly

recognized by such authorities and officers as an Omaha Indian woman.

And your oratrix further says that she took possession of a tract of land on the Omaha reservation hereinbelow described, claiming the same by reason of her right to an allotment on the said reservation; that your oratrix has broken the said tract of land and converted the same from wild, raw and untilled prairie into well tilled fields and has placed valuable improvements thereon and has built and maintained for herself and family a home thereon and has solely through her own and her family's efforts and labor farmed and cultivated and occupied the said premises without objection on the part of the said tribe of Indians or of the officials of the United States or of anyone, and she is now, together with her family of which she is the head, as such member of the Omaha Indian tribe, under and by virtue of the foregoing treaties and acts of Congress hereinbefore set forth, occupying and has since 1885 occupied the following described lands within and a part of said Omaha Indian reservation, situated in the county of Thurston and State of Nebraska, and within the jurisdiction of this court, to-wit: the southeast quarter of section seventeen, and the northeast quarter of section twenty-nine, both of township twenty-four north, of range eight east of the 6th principal meridian and also the south one-half of
1033 the southwest quarter of section eight, and the north one-half of the northwest quarter of section seventeen, both in township twenty-five north, of range seven east of the 6th principal meridian. That the said described land as above set forth is a part of the land referred to in the treaties hereinbefore set forth and the same has been surveyed in accordance with the said treaties and acts of Congress.

And your oratrix further shows unto your honors that no other person besides herself claims the right to the land so selected by her and that no selection of such lands has been made by any other person or persons than your oratrix and that no certificate of such selection has been issued to any person for such lands nor any allotment thereof been made by the defendant, The United States of America, to any other person, nor has any patent so issued and that the United States of America, has not opposed and does not oppose the claim of your oratrix to said land by reason of such lands having been selected or claimed by any other person, except as hereinafter set forth.

And your oratrix further shows that notwithstanding the facts as hereinbefore set forth, and notwithstanding the fact that she is within and under the provision of the laws referred to herein and is entitled to an allotment of one hundred and sixty acres of said land for herself, and that each of her children is entitled to an allotment of forty acres of said land, the defendant, The United States of America, by and through its officers and agents, refuses and neglects to make to your oratrix the allotment of land to which she and her children, or either of them, are entitled, and that notwithstanding

the rights of your oratrix to such allotments she is now and has been unlawfully denied the allotment and parcel of land to which she is, and claims to be, lawfully entitled by virtue of said treaties
1034 and acts of Congress, and in that behalf your oratrix shows that the defendant, The United States of America, notwithstanding the selection of the above described lands by your oratrix, refuses through the Department of the Interior to approve such selection of land so made by your oratrix, although your oratrix has notified said defendant, The United States of America, through its proper officers and agents that she has made such selection as was her right under and by virtue of said treaties and acts of Congress, and the said defendant, The United States of America, notwithstanding such selection and notification, has refused and still refuses to cause the patent to issue for such allotment and selection in the name of and to your oratrix.

And your oratrix further shows that in accordance with the laws of the United States, the defendant, The United States of America has detailed and appointed to said Omaha Indian tribe as agent of the United States of America, over what is known as the Omaha reservation, as hereinbefore described, Charles P. Mathewson, who is now in charge of the said land of the Omaha reservation, including those in controversy herein, now claimed by your oratrix, and that the said Charles P. Mathewson is now the person designated by the laws of the United States to superintend and supervise and make allotments of lands to those members or former members of the Omaha Indian tribe entitled to such allotments under the foregoing treaties and statutes.

And now the said Charles P. Mathewson and the Secretary of the Interior of the United States, as representing the defendant refuse and neglect to make to your oratrix the allotment of land to which she is entitled, and that notwithstanding her rights in the premises she is now, and has been, unlawfully denied the allotment to her of said parcel of land which she now claims and which the defendant refuses to make to her, and that said defendant
1035 The United States of America, refuses to issue to her a certificate and patent for said parcel of land to which she is entitled under the laws and treaties of the United States notwithstanding the fact that under the said laws and treaties and practice heretofore prevailing in the allotment of said lands as adopted and pursued by the defendant, The United States of America, it is the duty of the agent assigned to said tribe to issue to each member thereof, whether of mixed or full blood, a certificate showing the location of the land selected by said Indian and that then and thereupon it is and becomes the duty of the Secretary of the Interior to issue to such member a patent for the land so selected under the laws as hereinbefore set forth, and notwithstanding the fact that your oratrix has in all respects complied with the requirements, rules and regulations adopted and prescribed by the defendant, The United

States of America, relating to the selection and allotment of said lands.

And your oratrix further shows that in accordance with an act of Congress of August 7th, 1882, as hereinbefore set forth, the consent of the Omaha tribe of Indians was given in open council in May, 1899 and thereupon assignments for allotments were made by special agent under the direction of the Commissioner of Indian Affairs of the United States; that the instruction to said special agent directed that in making assignments, he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed and the subject of the litigation in court. That said special agent did not follow his instructions but assigned a portion of such land without investigation as to prior claims or notice to claimants. That your oratrix gave the defendant, The United States of America, and said special agent due and proper notice of her claim and the land selected by her which is herein-
1036 before more fully set forth. That said special agent, contrary to said special instructions and to such notice, assigned of the land claimed by your oratrix the south-west quarter of the south-west quarter of section eight (8), in township twenty-five north, of range seven (7) east to Wallace Miller and the south-east quarter of the southwest quarter of section eight (8), in township twenty-five (25) north, of range seven (7), east, and the north-east quarter of the north-west quarter of section seventeen (17) in township twenty-five (25) north, of range seven (7) east, to Mary A. McCauley, and the northwest quarter of the northwest quarter of section seventeen in township twenty-five north, of range seven east, to Tah-e-gra-ha Canby, all of whom are Omaha Indians, which assignments were approved by the Secretary of the Interior of the United States and certificates therefor issued accordingly to the said Omaha Indians who were at all times herein mentioned and now are citizens of the United States. That subsequently leases were made by and through the authority of the United States and by Charles P. Mathewson as agent of the Omaha Indian tribe, as follows: the southwest quarter of the southwest quarter of section eight, in township twenty-five north, of range seven east, from Wallace Miller to Michael Cooney; and the southeast quarter of the southwest quarter of section eight in township twenty-five north, of range seven east, and the northeast quarter of the northwest quarter of section seventeen, in township twenty-five north, of range seven east, from Mary A. McCauley to Joseph E. Blenkiron; and the northwest quarter of the northwest quarter of section seventeen, in township twenty-five north, of range seven east, from Tah-e-gra-ha Canby to Charles C. Maryott and that in accordance with the terms of said leases the rent therefrom is payable in semi-annual payments each year to Charles P. Mathewson, agent, for the use and bene-
1037 fit of said pretended allottees and that in accordance with the rules and customs of the office of the Indian agent, said rent money will be immediately paid to the said defendants Wallace

Miller, Mary A. McCauley and Tah-a-gra-ha Canby by the said Charles P. Mathewson, agent.

That said defendants, Wallace Miller, Mary A. McCauley and Tah-e-gra-ha Canby are entirely insolvent and irresponsible and if said rent moneys are paid to them or either of them, the same will be wholly lost to your oratrix.

And your oratrix further shows unto your honors that under and by virtue of an act of Congress approved on the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of lands under any act of Congress, or law of the United States, or who claim to be so entitled under any allotment or act or grant made by Congress, or who claim to be unlawfully denied or excluded from any allotment or parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence prosecute or defend any action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States; and that said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdictions involving the rights of any person of whole or of mixed Indian blood or descent, to any allotment of land under any law or treaty, and the said act further provides that a judgment or decree of any such court in favor of any claimant to an allotment of lands should have the same effect when properly certified to the Secretary of the Interior of the United States, as if such allotment had been made, allowed and approved by him, and that the United States of America is and may be made a proper party to such suit and proceeding, which said act of
1038 Congress was published by the authority of the United States in the 28th volume of the Statutes at Large, on page 305, said act being amended by re-enactment duly approved by the President of the United States, on the 6th day of February, 1901, to which for greater certainty your oratrix begs leave to refer.

And your oratrix therefore shows unto your honors that she is without adequate remedy at law and without remedy in the premises unless relieved by your honors in this court of equity, and she therefore prays the aid of the court in the premises, and that the said defendant, The United States of America, may appear and answer this bill of your oratrix, but without oath, answer under oath being expressly waived.

That it be ordered and decreed that your oratrix is entitled to have allowed to her the land described in this bill of complaint of your oratrix and that the defendant, The United States of America, be ordered and required to make and issue to your oratrix the certificate and patent to the above described lands as she shall be entitled to as contemplated and provided by the foregoing treaties and acts of Congress and to recognize in all respects the rights of your oratrix to and upon the lands now occupied by her, for herself and as head of her family; and her rights thereto and the rights of her

children under and by virtue of the said laws of the United States and treaties, be forever established and that your oratrix and her children may be fully recognized as members of the said tribe of Omaha Indians and that all of the benefits and privileges thereto belonging may be granted to her and her family, and that the selections and pretended assignments of land for allotment to Wallace Miller, Mary A. McCauley and Tah-e-gra-ha Canby, out of the premises selected and claimed by your oratrix be ordered annulled, vacated and canceled and that the said tenants of the same, Joseph E.
1039 Blenkiron, Charles C. Maryott and Michael Cooney be enjoined and restrained from paying the rents of the said land selected by your oratrix and leased by said tenants, to Charles P. Mathewson or to any of the above named Omaha Indians or to any person or persons until the settlement and determination of this controversy and until the final adjudication of the rights of your oratrix to an allotment of said lands, and that your oratrix may have such other and further relief as may be just and equitable, and so may it please your honors to grant unto your oratrix the most gracious writ of subpœna to be issued under the seal of this court to be directed to the defendants herein and to the United States of America, therein and thereby commanding it on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand and abide and to perform such orders and decrees therein as — this court shall seem meet.

BROME & BURNETT,
HARRY L. KEEFE,
Solicitors for Complainant.

MARY SAILORS,
Complainant.

STATE OF NEBRASKA, } ss:
County of Cuming, }

Mary Sailors being first duly sworn on oath and according to law deposes and says that she is a resident of the county of Thurston and State of Nebraska; that she is the complainant in the above amended bill of complaint; that she is acquainted with the facts as therein stated; and that the statements of facts and allegations as therein contained and set forth are true.

MARY SAILORS.

1040 Subscribed in my presence and sworn to before me this 15th day of August, A. D. 1901, in the county and State aforesaid.

[SEAL.]

J. J. ELKIN,
Notary Public.

Endorsed: Filed Oct. 9 1901 Geo. H. Thummel, clerk.

1041 Thereupon afterwards, to wit:—on the 26th day of September, 1902, answer to amended bill of complaint was filed in said case, which said answer is in words and figures following, to wit:—

In the Circuit Court of the United States for the District of Nebraska.

MARY SAILOR, Complainant,
vs.
THE UNITED STATES OF AMERICA and Wallace Miller, Mary A. McCauley, Tah-egra-ha Canby, Michael Cooney, Joseph E. Blenkiron, Chas. C. Maryott, and Charles P. Mathewson, Defendants.

Doc. T, No. 461. Answer to Amended Bill of Complaint.

The answer of The United States of America, Wallace Miller, Mary A. McCauley, Tah-egra-ha Canby, Michael Cooney, Joseph E. Blenkiron, Chas. C. Maryott, and Charles P. Mathewson, defendants, to the amended bill of complaint of Mary Sailors, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer say:

1. These defendants deny that the complainant is an Omaha Indian and deny that complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary, these defendants aver that the said complainant is a white woman, and citizen of the United States, and that her ancestors were white persons and citizens of the United States, and that her said
1042 ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that complainant or her ancestors ever maintained or sustained tribal relation with the Omaha tribe of Indians in Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States as members of the Omaha tribe of Indians, *by the said tribe or by the United States, as members of the Omaha tribe of Indians.*

This defendant- for further answer avers that the complainant claims to trace her lineage back to Michael Barada, who had inter-

married with an Indian woman by the name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but *this* defendant- *is* not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to her proof in that regard.

That there was born to the said Michael Barada and his wife in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

1043 That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vien continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years, until some time after the approval of the act of Congress of August 7, 1882, (22 U. S. Stats. at Large, 341) hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Euphrasia (the mother of this complainant) and the said Euphrasia was of but one fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis and was never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Euphrasia Barada, so being a white woman and a citizen of the United States, married a white man named Fulton Peters, a white man of German nationality, and a citizen of the United States. There was born to the said Fulton Peters and his wife Euphrasia, a daughter named Mary, who is the complainant herein, and the said Mary, being such white person and citizen of the United States taking the status of her father continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when she came to the Omaha reservation with her parents, with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

2. *This* defendant- for further answer avers that the complainant

did not live with the Omaha tribe of Indians on the reserva-
1044 tion at the time of the treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865 (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Mary Sailors, being only one sixteenth Indian blood, and she not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit:—March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and *this* defendant- further avers that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of
1045 the complainant or her ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. *This* defendant- further answering says: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States Indian agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not

upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August, 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or de-cendants of said parties, so far as I
1046 know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant. That the said Antoine Barada was the grandfather of this complainant, and the said Euphrasia Peters and Fulton Peters were the parents of this complainant, and Josephine Peters and Frank Peters and Maggie Rockwell *née* Peters, were brothers and sisters of complainant.

4. *This* defendant further answering says: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work
1047 of allotting lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore that they were not rec-
1048 ognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not — all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant, and the action of the department thereon.

The last mentioned case was reported to the department
1049 by Miss Fletcher, under date of July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve.

Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

1050 It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born- upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. *This* defendant- further avers that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit: William Barada, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:—

OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

1051 SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off. We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the

land patented to the tribe, shall be held just as safe as our individual land.

1052 If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards, on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

1053 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the

treaty of March 6, 1865, (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7,
1054 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary*.

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. *This* defendant- further avers that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Com-
1055 missioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters,

William Barada, Luke Sailors and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, *for military aid to* eject said intruders and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Frank Peters, Luke Sailors and Walter Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as she was of that class.

This defendant- further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. *This* defendant- further avers that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the pur-
1056 pose and intention of the department *of* have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. The defendants for further answer aver that the complainant never occupied the lands claimed in township 25, range 7, E., which

had been allotted and patented to other parties, and that the only lands occupied by complainant were the lands described in township 24, range 8, E., which have been reserved for the complainant, and her family hereinafter referred to; that the complainant was born in Richardson county in the State of Nebraska, 1859 and continued to live in Richardson county, State of Nebraska until the year 1890. That while so living in Richardson county she married Lot Sailors in the year 1880, the said Lot Sailors being a free born full blood white man.

1057 That said complainant and her husband came to the Omaha reservation in the year 1890 and were not residents on the reservation at the time of the allotment of lands under the act of 1882. That the said complainant is one of the children of Fulton Peters a free born full blood white man and his wife Euphrasia, and that the mother of the complainant received an allotment of lands on the Nemaha reservation at a time when the complainant was a minor child living with her said parents.

10. These defendants further aver that the United States allotting agent appointed by the Interior Department to investigate selections and make allotments of land, investigated, ascertained and found as a fact that the complainant was not entitled to an allotment of any of the lands claimed by her in section 8, township 25,range 7, E., and reported his said findings to the Interior Department and which said findings and report have been approved by the said department. And the said allotting agent did find as a fact that other persons to whom the said land has been allotted and patented, had a better and prior claim thereto and reported his said finding to the Interior Department, and which said report and finding was approved by the Interior Department and patents issued for the said lands in section 8, township 25, range 7, E.

That the said allotting agent did reserve for the complainant and her family the lands described in her petition and claimed by her in township 24, range 8, E, to-wit: The S. E. ¼ of section 17, and the N. E. ¼ of section 29, in said township 24, range 8 E., and which reservation has been made upon the surveyed maps in the office of the Commissioner of Indian Affairs, awaiting the final determination of this suit.

11. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint
1058 contained material or necessary for *this* defendant- to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of *this* defendant-, and *this* defendant- den*ies* that the said complainant is entitled to the relief or any part thereof in the said complaint demanded.

And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JNO. L. WEBSTER,
Att'y for Defendants.

W. S. SUMMERS,
U. S. Attorney.

Endorsed: Filed Sep. 26 1902 Geo. H. Thummel, clerk.

1059 Thereupon afterwards, to-wit:—on the 3rd day of October, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:—

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

MARY SAILORS, Complainant,
vs.
THE UNITED STATES, Defendant. } No. 461, Docket T.

The Replication of Mary Sailors, Plaintiff, to the Answer of The United States, Defendant.

The repliant, saving and reserving unto herself now and at all times hereafter, all, and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say- that *they* will aver, maintain and prove *in* her said bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by the repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things the repliant does and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray- as in and by her said bill of complaint she has already prayed.

H. C. BROME &
ANDERSON & KEEFE,
Solicitor- for Plaintiff.

Endorsed: Filed Oct. 3 1902 Geo. H. Thummel, clerk.

1060 Thereupon afterwards, to-wit:—at the May 1902 term of said court and on the 8th day of November 1902, the following decree was signed and filed in said case and duly entered of rec-

ord in Journal No. 1 of the proceedings of said court had on said day, to-wit:—

MARY SAILOR, Complainant,
vs.
THE UNITED STATES OF AMERICA and WALLACE Miller, Mary A. McCauley, Tah-egra-ha Canby, Michael Cooney, Joseph E. Blenkiron, Chas. C. Maryott, and Charles P. Mathewson, Defendants. } Doc. T, No. 461. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is, therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

1061 Thereupon afterwards, to-wit: on the 13th day of October, 1903 assignment of errors was filed in said case, which said assignment is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MARY SAILORS, Complainant,
vs.
THE UNITED STATES OF AMERICA, Wallace Miller, Mary A. McCauley, Tah-egraha Canby, Michael Cooney, Joseph E. Blenkiron, Charles C. Maryatt, and Charles P. Mathewson, Defendants. } Docket T, No. 461. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were

not on the reservation at such times, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide*
1062 residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in nolding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Mary Sailors and her children were not entitled to claim and have allotted to them the land described in plaintiff's bill of complaint, to-wit: The south east quarter of section seventeen (17), and the north east quarter of section twenty-nine (29), all in township twenty-four (24), north, of range eight (8) east; also the south half of the south west quarter of section eight, and the north half of the north west
1063 quarter of section seventeen (17), all in township twenty-five (25), north, of range seven (7) east.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause — dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

MARY SAILORS,
Complainant,
By BROME & BURNETT,
Her Attorneys.

Endorsed: Filed Oct. 13 1903. Geo. H. Thummel, clerk.

1064 Thereupon, to-wit: on the said 13th day of October, 1903, a petition for appeal was filed in said case, which said petition for appeal is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MARY SAILORS, Complainant, *vs.* THE UNITED STATES OF AMERICA, WALLACE Miller, Mary A. McCauley, Tah-egraha Canby, Michael Cooney, Joseph E. Blenkiron, Charles C. Maryatt, and Charles P. Mathewson, Defendants.	Docket T, No. 461. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives herself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That as assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

1065 Wherefore complainants prays for the allowance of an appeal in said cause to the Supreme Court of the United States, and — a transcript of the record and proceedings, duly authenticated, may be sent to said court.

MARY SAILORS,
Complainant,
By BROME & BURNETT,
Her Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

Thereupon, to-wit: on the said 13th day of October, 1903, a bond was filed in said case, which said bond is in the words and figures following, to-wit:

1066 461, T.

Know all men by these presents, that we, Mary Sailors & W. K. Mitchell are held and firmly bound unto The United States of America, Tah-egraha Canby Mary McCauley in the full and just sum of one hundred dollars to be paid to the said The United States of America Tahegraha McCauley & Mary McCauley heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand *eight* hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Mary Sailors plaintiff and The United States of America, Tangraha Canby and Mary McCauley defendant- decree was rendered against the said Mary Sailors and the said Mary Sailors has obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The United States of America Tangraha Canby Mary McCauley citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Mary Sailors shall prosecute said appeal to effect, and answer all costs if *he* fail to make good *his* plea, then the above obligation to be void, else to remain in full force and virtue.

MARY SAILORS. [SEAL.]
W. K. MITCHELL. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of—
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge*.

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1067 Thereupon afterwards, to-wit: on the said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1068 The United States of America to the United States of America, Wallace Miller, Mary A. McCauley, Tah-egraha Canby, Michael Cooney, Joseph E. Blenkiron, Charles C. Maryatt, and Charles P. Mathewson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Mary Sailors is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] # 2002. No. 461. United States circuit court, district of Nebraska. Mary Sailors *vs.* United States, *et al.* Citation. Filed Oct. 27 1903 Geo. H Thummel, clerk.

1068*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Wallace Miller, Mary A. McCauley, Tahegraha Canby, Michael Cooney, Joseph E. Blenkiron, Charles C. Maryatt and Charles P. Mathewson by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1068*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he

received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

SUSAN M. BONNEVIER,
Notary Public.

1069 Thereupon afterward, to-wit: on the 2nd day of October, 1902, an amended bill of complaint was filed in said case, which said bill of complaint is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ARTEMESIA FROST and MARY FROST and Benjamin F. Frost, by Artemesia Frost, Their Next Friend, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, MARY Tyndall, and Agnes Springer, Defendants.

No. 462. Amended Bill of Complaint.

To the honorable the judges of said court:

Comes now Artemesia Frost, who brings this suit in her own behalf and as next friend of and for Mary Frost and Benjamin F. Frost, plaintiffs, and gives the court to understand and be informed that the said Mary Frost and Benjamin F. Frost are minor children of the plaintiff Artemesia Frost; Mary Frost being sixteen years of age and Benjamin F. Frost being fifteen years of age.

And the said plaintiff, Artemesia Frost, being the mother of said minors, and bringing this suit in their behalf so far as their interests are concerned as the next friend of each of said minors, and in that behalf, your orator says that this suit is brought against The United States of America, Mary Tyndall and Agnes Springer; that the matter in dispute herein exceeds the sum and value of two thousand dollars, exclusive of interest and costs as to the interest of each of the several plaintiffs, and arises under the Constitution of the United States and the laws of the United States and treaties made under their authority as hereinafter more specifically set forth.

1070 That plaintiffs are members of what is known as the Omaha tribe of Indians in the State of Nebraska.

That plaintiff and the said Mary Frost and Benjamin F. Frost are members of said Omaha tribe of Indians, being the tribe of Indians named and designated as "Omahas" in the various statutes of the United States and in the treaties hereinafter set forth, being of what is known as mixed blood and lineal descendants from Michael Barada and his wife, Taegleha Hacieneda, an Omaha Indian woman of the said tribe; that plaintiffs and their ancestors have at all times and continually maintained their domicile with the said Omaha tribe of Indians, and have at all times been recognized as members of said tribe by the other members thereof, and by the Government of the United States in and about the business transacted by it with said Omaha tribe of Indians, and has participated in the division of property and annuities made to the several members of said tribe by virtue of the laws of the United States and the several treaties by and between said tribe and the United States.

That on the 16th day of March, 1854, a certain treaty was entered into by and between the United States and the Omaha tribe of Indians wherein and whereby the said tribe ceded unto the United States certain land situated in what is now the State of Nebraska, south of what has recently been known as the Omaha reservation, and in consideration of the session of the said land the United States agreed to pay and did pay unto the said tribe certain annuities for a certain period of years more fully set out in the said treaty, and agreed to perform in addition thereto certain covenants more fully in the said treaty set forth.

That among other things it was provided in the said treaty that the President of the United States might from time to time under his direction, cause the whole of the land of the said Omaha tribe, not by said treaty ceded, or any part thereof, that he might
1071 think proper, to be surveyed into lots and to assign to such Indian and Indians of said tribe as might be willing to avail themselves of the privileges and who might locate thereon as a permanent home, if a single person over twenty-one years of age one-eighth of a section to each family of two, one-fourth of a section, to each family of three and not exceeding five, one-half of a section, and to each family of six and not exceeding ten, one section, and to each family over ten in number, one fourth of a section for every additional five members; and that the said President might at any time at his discretion, if said person or family desired to make such location their permanent home, issue to said person, persons or family a patent of said land under certain conditions in the said treaty set forth. All of which matters and things more fully and at large appear in the said treaty as published under authority of the United States in the Statutes at Large, vol. 10, page 1043, to which for greater certainty your orator- herein begs leave to refer.

That on the 6th day of March, 1865, the said United States made and entered into a certain further treaty with the said tribe wherein and whereby the latter did cede to the United States a certain

other tract of land north of what has since been known as the Omaha reservation, for a consideration on the said treaty named. Said treaty provided among other things, that the said tribe being desirous of promoting settled habits of industry and enterprise among themselves and of abolishing the tenure by which they then hold their lands by assigning limited quantities thereof to the several members of the tribe, including their half or mixed blood relatives then residing with them, to be cultivated and used for their own individual use and benefit, it was therefore provided, agreed and stipulated that the remaining portion of their then reservation should be set apart for such purpose and that out of the same there should
1072 be assigned to each head of a family not exceeding one hundred and sixty acres, and to each male member eighteen years of age and upwards without family, not exceeding forty acres of land, and including in every case as far as practicable a reasonable proportion of timber. That the whole of said land, assigned or unassigned, should constitute and be known as the Omaha reservation; that said division and assignment of land in severalty should be made under the direction of the Secretary of the Interior and when approved by him, should be final and conclusive; that certificates should be issued by the Commissioner of Indian Affairs for the tract so assigned, specifying the names of the individuals to whom they had been assigned respectively, and that they were for the exclusive use and benefit of themselves, their heirs and descendants, and that said tract should not be leased or otherwise disposed of except to the United States or other members of the tribe under such rules and regulations as might be prescribed by the Secretary of the Interior and that they should be exempt from taxation, levy, sale or forfeiture until otherwise provided for by Congress, which said last mentioned treaty was published by authority of the United States in vol. 14 of the Statutes at Large at page 667, to which for greater certainty your orator- begs to refer.

That by act of Congress, approved the 7th day of August, 1882, entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska, and for other purposes," it was among other things provided that with the consent of said tribe expressed in open council the Secretary of the Interior should be authorized to cause to be surveyed and if necessary sold, all that portion of the said Omaha reservation lying west of a certain right of way thereupon granted by the said tribe through the said reservation to the Sioux City and Nebraska Railway
1073 Company; that said land should be appraised in tracts of forty acres each and that the Secretary of the Interior should thereupon issue proclamation to the effect that unallotted lands should be open to settlement and that within one year after date of such proclamation each *bona fide* settler upon said lands having made valuable improvements thereupon, should be entitled to purchase, according to said survey, at the appraised value of said lands,

the said lands so occupied and improved by him. Said sale was to be for cash payable in three equal payments in one, two and three years from the date of entry, with interest at the rate of five per cent. per annum; that the proceeds of said sale, after paying expenses incident to carrying out the provisions of the said act; should be placed to the credit of the said tribe in the Treasury of the United States and should bear interest at the rate of five per cent. per annum, which income should be expended for the benefit of the said Indians under the direction of the Secretary of the Interior. And the said act further provides that the said Secretary should be thereby authorized either through the agent of the said tribe or such other person as he might designate, to allot the lands lying east of the said right of way granted the said railroad in severalty to the Indians of the said tribe; to each head of a family one quarter of a section to each orphan child under eighteen years of age, one eighth of a section; and to each other person under eighteen years of age one sixteenth of a section; and that said allotments should be deemed and held in lieu of the allotments provided for in said treaty of March 6, 1865, *provided* that any Indian to whom a tract of land had been assigned and certificate issued and who was entitled to the same under the provisions of said treaty if he had made valuable improvements thereon, and any Indian who being entitled to said assignment and certificate under said treaty has settled and made
1074 valuable improvements upon the tract assigned to any Indian who had never improved or occupied said land should have a preference right to select a tract upon which his improvements were situated for the allotment provided for by the said act, and that all allotments should be selected by the Indians, heads of families selecting for their minor children and the agent selecting for each orphan child. That upon the approval of the allotment as provided by the Secretary of the Interior, he should cause patents to issue therefor in the name of the allottees, which patents should be of the legal effect and declare that the United States does and will hold the land that is allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment should have been made and in case of his decease, of his heirs, according to the law of the State of Nebraska; and at the expiration of the said period the United States would convey the same by patent to the said Indian or his heirs in free discharge of said trust and free of all charge or incumbrance, and that the land should descend and be subject to partition in accordance with the laws of the State of Nebraska, after patents therefor should have been executed and delivered, and that upon the completion of said allotment and the patenting of the same to the said allottees, each and every member of the said tribe should have the benefit of and be subject to the laws, both criminal and civil, of the State of Nebraska. And said act further provided that the residue of lands lying east of the said right of way after the making of said allotments should be patented to said tribe, which patent should be of legal effect and declare that

the United States does and will hold the land thus patented for the period of twenty-five years in trust for the sole use and benefit of the said tribe, and that at the expiration of the said period the United States would convey the same by patent to the said
1075 tribe in fee discharge- of said trust and free from all charge and incumbrance; provided that from the lands thus patented to the tribe in common allotment should be made to each Omaha child who might be born prior to the expiration of the time during which said land should be held in trust and upon the said condition as theretofore provided, which said last mentioned act was published by authority of the United States in vol. 22 of the Statutes at Large at page 341, to which for greater certainty your orators beg to refer.

Plaintiffs further say, that the plaintiff Artemesia Frost was and at all the dates hereinbefore mentioned has been a member of the said Omaha tribe of Indians, and fully recognized as such by said tribe and by the Government of the United States, and entitled to an allotment of land in and upon the said Omaha reservation in the manner provided by law, and that the plaintiff Artemesia Frost, has selected for herself, the following described land upon said reservation, to-wit:

The south one-half (S. ½) of the northwest quarter (¼) of section nine (9), township twenty-five (25), range seven (7) east of the sixth principal meridian, in Nebraska, containing eighty acres. Also, a certain adjoining tract of land containing seventy-eight (78) acres and more particularly described as follows:

Commencing at a point at the northeast corner of the south one-half (½) of the northwest quarter (¼) of section nine (9); running thence north fifty-two (52) rods; thence west two hundred forty (240) rods; thence south fifty-two (52) rods; thence east two hundred forty (240) rods, to the place of beginning. And for her daughter, the plaintiff Mary Frost; the south one half (½) of the northeast quarter (¼) of section eight (8), township twenty-five (25), range
1076 seven (7).

And for her said minor son, the said Benjamin F. Frost: the north one-half (½) of the southeast quarter (¼) of section seven (7), township twenty-five (25) range seven (7) containing eighty (80) acres. All of said lands being upon and a part of said Omaha reservation, lying and being in Thurston county in the State of Nebraska, and for four years last past has been in actual possession of said tract of land, for herself and her children, and has caused the same to be fenced, cultivated and house and other out-buildings erected thereon and made other lasting and valuable improvements thereon.

That the said described land, as above set forth, is a part of the land referred to in the treaties hereinbefore set forth and has been surveyed in accordance with the treaties and acts of Congress and plaintiffs further show unto your honors that no other person besides themselves claims the right to the land so selected by plaintiffs;

that no selection of such lands has been made by any other person than plaintiffs except as hereinafter set forth and that no certificate of such selection has been issued to any person for such land, nor has any allotment thereof been made by the defendant, The United States of America to any person whatsoever, nor has any patent issued accordingly to said lands except as hereinafter set forth and that the defendant, The United States of America has not opposed and does not oppose the claim of plaintiffs to said lands by reason of such lands having been selected by others; that although plaintiffs are entitled to the allotments of said land to them as herein provided, yet the defendant, through the Secretary of the Interior of the United States and one Charles Mathewson, the Indian agent in charge of said reservation, refuses to issue — to allot said
1077 lands to said plaintiffs or to make any allotment of land to plaintiffs in any manner whatsoever and denies the rights of plaintiffs in the premises and refuses to issue to them a certificate and patent for such lands as required by law; that plaintiff- have in all respects complied with the requirements, rules and regulations adopted and prescribed by the defendant, The United States of America, relating to the selection and allotment of said land.

Plaintiffs further show unto your honor that in accordance with an act of Congress of August 7, 1882, as hereinbefore set forth, the consent of the Omaha tribe of Indians was given in open council in May, 1899 and thereupon assignments for allotments were made by a special agent under the direction of the Commissioner of Indian Affairs of the United States; that the instructions to said special agent directed that in making assignments he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the land claimed and the subject of litigation in court: that said special agent did not follow his instructions but assigned a portion of such land without investigation as to the prior claims or notice to claimants; that plaintiffs gave to the defendant, The United States of America and also to said special agent due and proper notice of their claim and a description of the land selected by them, which is hereinbefore more fully set forth, and plaintiffs further gave said special agent and the defendant, The United States of America, notice that their claim- to allotments of the lands selected by them were the subject of litigation in the proper court at that time, which was prior to the making of any assignment by said special agent; that said special agent, contrary to his said instructions and to the notices of plaintiffs, assigned of the land claimed by Benjamin Frank Frost the northeast quarter (¼) of the southeast quarter (¼) of section seven (7), township twenty-five (25) range seven (7) east of the sixth principal meridian in Ne-
1078 braska, to Mary Tyndall, and the northwest quarter of the southeast quarter of section seven (7), township twenty-five (25) range seven (7) east of the sixth principal meridian in Nebraska to Agnes Springer, all of whom are Omaha Indians which assignments were approved by the Secretary of the Interior of the United States and

certificates accordingly issued to said Omaha Indians, who were at all times herein mentioned and now are citizens of the United States and whose claims to the above described premises and rights thereto were at all times junior and inferior to the claim of your complainants to the above described lands.

That under and by virtue of an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent, who are entitled to allotments of lands under any law of Congress, or who claim to be unlawfully denied or excluded from any allotment or parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence, prosecute or defend any action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States; and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising without their respective jurisdiction involving the rights of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty, and the said act further provides that a judgment or decree of any such court in favor of any claimant to an allotment of lands should have the same effect when properly certified to the Secretary of the Interior as if such allotment has been made and approved by him, which such act of Congress was published by authority of the United States in the 28th volume of the Statutes at Large on page 305, to which for
1079 greater certainty your orators beg leave to refer.

Your orators therefore show to your honors that they are without adequate remedy at law and without remedy in the premises unless relieved by your honors in this court of equity, and they therefore pray the aid of the court in the premises, and that the said defendants may appear and answer this bill of your complainants but without oath, answer under oath being expressly waived.

Wherefore your orators show unto your honors that they are without remedy at law and remediless in the premises unless relieved by your honors in this court of equity and they therefore pray the aid of the court in the premises, and that the said defendants may appear and answer this, your orators' bill, but without oath, answer under oath being expressly waived. That it be ordered and decreed that your orators are entitled to have allotted to them the lands described more particularly in this, your orators' bill of complaint, and that the defendant, The United States of America, be ordered and required to make and issue to your orators the patent contemplated and provided by the foregoing treaties and acts of Congress and to recognize in all respects the rights of your orators to and upon the lands so now by them occupied and that their rights thereto under and by virtue of the laws of the United States and treaties be forever established and that your complainants may be fully recognized as members of said tribe of Omaha Indians and that all the benefits and privileges thereunto belonging may be granted to them and that the selections and pretended assignments

of land for allotment to Mary Tyndall and Agnes Springer out of the premises selected and claimed by your complainants be ordered annulled, vacated and canceled and that your complainants may have such other and further relief as may be agreeable to equity and good conscience and so may it please your honors to grant unto your complainants the most gracious writ of subpœna to be
1080 issued under the seal of this court to be directed to the defendants herein and to The United States of America therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and to appear before this court then and there to answer all and singular the premises and to stand — and abide and to perform such orders and decrees therein as to this court shall seem meet.

BROME & BURNETT,
Solicitors for Complainants.

Endorsed: Filed Oct. 2 1902. Geo. H. Thummel, clerk.

1081 Thereupon afterwards, to-wit: on the 3rd day of October, 1902, an answer to amended bill of complaint was filed in said case, which said answer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

ARTEMESIA FROST and MARY FROST and Benjamin F. Frost, by Artemesia Frost, Their Next Friend, Plaintiffs, vs. THE UNITED STATES OF AMERICA, Defendant.	Doc. T, No. 462. Answer to Amended Bill of Complaint.

The answer to the United States of America to the amended bill of complaint of Artemesia Frost and Mary Frost and Benjamin Frost, by Artemesia Frost, their next friend, plaintiffs.

This defendant now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections of the said complainants' said amended bill of complaint contained, and for answer thereto and unto so much and — parts thereof, as this defendant is advised is or are material or necessary for it to make answer unto this defendant for answer, says:

1. This defendant denies that complainants are Omaha Indians, and denies that complainants are or ever were members of the Omaha tribe of Indians of Nebraska, upon the contrary this defendant avers that the said complainants are white persons and citizens of the United States, and that their ancestors were white persons

and citizens of the United States, and that their ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and this defendant denies that the ancestors of complainants ever maintained or sustained tribal relations with the
1082 Omaha tribe of Indians of Nebraska, and denies that they ever participated in the benefits and other rights of the said tribe; and denies that they were recognized by the said tribe or by the United States as members of the Omaha tribe of Indians.

This defendant for further answer avers that complainants claim to trace their lineage back to Michael Barada, who had intermarried with an Indian woman by name Tuningletha or Taegleha Hacienda; that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but this defendant is not advised whether she was of Omaha Indian blood or the blood of some other Indian tribe and therefore leaves the complainants to their proof in that regard.

That there was born to the said Michael Barada and his wife in the year 1811, a daughter by the name of Ma-garet Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of her father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Ma-garet Barada lived in the city of St. Louis with her parents until the year 1854, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Ma-garet Barada intermarried with one Thomas Sloan, the grandfather of complainants, and that said Thomas Sloan was a free born white man of Irish nationality and a citizen of the United States, and that said Ma-garet and her husband Thomas Sloan continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years until
1083 some time after the approved act of Congress of August 7, 1882, (22 U. S. Statutes at Large, 341) hereinafter more particularly referred to.

That to the said Thomas Sloan and his wife Ma-garet there was born a daughter named Artemesia Sloan (the complainant herein) and the said Artemesia Sloan was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis and was never on the Omaha reservation. That the said Artemesia Sloan so being a white woman and a citizen of the United States married a full blood white man named Leonard Frost and a citizen of the United States. There *was* born to the said Leonard Frost and his wife Artemesia, a daughter named Mary Frost and a son named Benjamin Frost, also complainants herein;

and the said complainants being such white persons and citizens of the United States, took the status of their father and continued to reside in the city of St. Louis and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when they came to the Omaha reservation with their parents with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

2. This defendant for further answer avers that complainants did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress of 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty only included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded complainants, being only one sixteenth Indian blood, and
1084 they not living with the Omaha tribe of Indians; that the provision of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and this defendant further avers that the said complainants were not residing on the Omaha Indian reservation, and *was* not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians, and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of complainants or their ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainants nor any of their ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. This defendant further answering says: That in a suit lately pending in the circuit court of the United States for the
1085 district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William

Barada, Mary Sailors, Frank Peters and Walter Peters were complainants, and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, said Thomas L. Sloan made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls, for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Ma-garet Sloan, William Sloan, Artemesia Sloan, Thomas Sloan John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or descendants of said parties, so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including these complainants.

4. This defendant further answering, says: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Thomas L. Sloan and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation,
1086 came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Thomas L. Sloan and his ancestors, did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent caused the claim of Thomas L. Sloan and his ancestors to be investigated, and being of the opinion as the result of said investigation that Thomas L. Sloan and his ancestors, were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, and on April 28, 1884, reported the facts thereon to the Interior Department, and said Department under date of May 9, 1884, ruled and determined that Thomas L. Sloan and his ancestors were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. This defendant further avers that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father

Michael Barada, to-wit, William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, and the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said
1087 reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claim under similar state of facts, including the said Thomas L. Sloan from the Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865 (14 Statutes 668) was made. (The 4th article of which extended the benefits conferred thereby in respect to allotments to such of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882, (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe a number of mixed bloods from the old Nemaha reservation,
1088 and among them the Peters family came to the Omaha reservation in the hope of securing allotments under the new law and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose

names are born- upon the duly certified census roll of 1871, or their descendants and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him and any other persons who may be thereon under a similar state of facts from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

6. This defendant further avers that the said Ma-garet Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and Walter Peters failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including Thomas L.
1089 Sloan, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and Walter Peters to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force, and under date of October 17, 1890, the United States Indian agent made the following report to the Commissioner of Indian Affairs regarding Margaret Sloan, Thomas Sloan that he did, "on the 24th day of October, 1890, give written notice to Thomas L. Sloan and Ma-garet Sloan to leave the Omaha reservation under instruction of office order of August 27, 1890.

I would further say in explanation that the Omaha Indians in council on 7th day of October, discussed this matter with the Sloans, and it was almost the unanimous opinion and wish that they be removed from the reservation the same as Peters and others. I am unable to find where the Sloans have any more right than the others mentioned and take them to be of "like class" as mentioned in yours of the 27th of August."

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which said recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Frank Peters, Luke Sailors and Walter Peters and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Pe
and which included Thomas L. Sloan as he was of that class.

1090 This defendant further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors and their families belong to a class of trespassers on the Omaha reservation, and are entitled to lands or benefits under the act of August 7, 1888, and should not be enrolled by him or allowed to share in the payment of annuities.

7. This defendant further avers that Ma-garet Sloan, Thomas L. Sloan, William Barada, Ma-garet Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent, from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer and proofs were taken, and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska entered a decree against the com-

1091 plainants in said suit, and in favor of the defendants therein, and which said judgment and decree dismissed the complainants' bill and which said judgment and decree was not appealed from, but remained in full force and effect.

8. This defendant further avers that afterward the said Ma-garet Sloan and Thomas Sloan endeavored to have themselves adopted into the Omaha tribe of Indians, and to have themselves recognized by the Interior Department as members of the Omaha tribe of

Indians, and to that end submitted to the department certain petitions purporting to be signed by certain members of the Omaha tribe of Indians; that under date of September 6, 1894, the department ruled that the said Ma garet Sloan and Thomas L. Sloan, should not be admitted to membership in the Omaha tribe of Indians, and accordingly so ordered, and in which order and opinion the department held as follows:

"Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure separate and distinct from their alleged rights as Omaha Indians by blood, and that such alleged right is not necessarily a test for such adoption, there remains the right to admission by the free will and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seems to be in proper form, and to express the desire of a majority of the members of the tribe that the persons in question shall be placed upon the rolls of the tribe, and be admitted to all the rights and privileges of other members thereof.

Besides the opposing petition hereinbefore referred to, the department is in receipt of recent information which shows that of the one hundred and fifty seven persons whose names appear on the six petitions presented with your letter, only seventy now favor
1092 the claimants; that eleven others have since assented to their adoption, making eighty-one in all now favorable; that twenty-four of the signatures thereon were not written by the parties whose names are given, nor was the use of their names authorized by them, that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women—neither of whom have any voice in such matters; that one of the nine members of the council purporting to have signed one of the petitions, did not sign nor authorize the use of his name and further, that there are about one hundred and eighteen male members of the tribe, of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petitions in question, the facts presented seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe, that the Sloans be not admitted to membership and it is so ordered.

In reference to that part of your report wherein you state that Thomas L. Sloan has held and improved a tract of land since 1881, or 1882, on the Omaha reservation, it would seem that he is doing so in defiance of any legal authority of occupation."

That after the above order and ruling of the department, the counsel for Ma-garet Sloan and Thomas L. Sloan applied to the department for reconsideration of the adoption case, and the department under date of November 17, 1896, re-affirmed this ruling and among other things therein said:

"It is not denied, nor has it ever been, that the Sloans, mother and son, are in part Omaha Indian blood. The tribe recognized them as such and made provision for them, with others, by the

treary of 1830, and in the opinion of the department, and the Omahas themselves, their claims as such mixed bloods were extinguished by the lands given them under the terms of the tenth article of the treaty named. * * * The claims of Ma-garet and her son William E. were extinguished prior to the birth of Thomas L. It is no where alleged or claimed that the latter is the offspring of a mother
1093 of Indian blood, much more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claims of Ma-garet and Thomas L. are based upon their birthright as Omaha Indians and upon their alleged adoption in recent years by the tribe.

The birthright claim of Ma-garet has been extinguished. Thomas L. never had such a claim. Neither of them have any claim by adoption, never having been regularly, fairly or properly adopted by the tribe, as was shown by department letter of September 6, 1894.

Notwithstanding that Mr. Breckenridge has advised the department by letter dated the 30th ultimo, of his withdrawal as attorney for the claimants, I have caused this review of the case to be made, and adhere to the opinion expressed in department letter of September 6, 1894, that the persons named have no valid, legal claims to membership with the Omaha tribe of Indians.

And defendant avers that the above ruling of the Department of the Interior established the fact that Ma-garet and her descendants, the plaintiffs herein, then were not and had not theretofore been members of the Omaha tribe of Indians, and the defendant avers that the said Ma-garet Sloan and her descendants the plaintiffs herein, are not and never have been members of the Omaha tribe of Indians.

9. This defendant for further answer says that Artemesia Frost took the status of her father Thomas Sloan, a full blood white man; was born in the city of St. Louis 1848, and took on and adopted the habits of civilized life among the white people in the city of St. Louis and continued to live with her parents in the city of St. Louis and on the Nemaha reservation until the year 1870, when she married Leonard L. Frost a white man.

That said Artemesia Frost received an allotment on the Nemaha reservation and continued to live thereon until about the
1094 year 1875 when she with her husband and family removed to the town of Highland, in the State of Kansas, where she continued to reside until the year 1893, when she and her children emoved to the Omaha reservation.

That said Artemesia Frost about the year 1893 claims to have selected for herself and her minor children Mary Frost and Benjamin Frost, the following lands: The S. ½ of the N. E. ¼ of section 9, township 25, range 7 east of the 6th P. M. in Nebraska, containing 80 acres. Also a certain adjoining tract of land containing 78 — and more particularly described as follows:

Commencing at a point at the N. E. corner of the S. ½ of the N. W. ¼ of section 9; running thence north 52 rods; thence west

240 rods; thence south 52 rods; thence east 240 rods to the place — beginning. And for her daughter, the plaintiff Mary Frost, the S. ½ of the N. E. ¼ of section 8, township 25, range 7. And for her said minor son the said Benjamin F. Frost; the north ½ of the S. E. ¼ of section 7, township 25, range 7, containing 80 acres. And which said lands has been reserved from allotment pending the result of this litigation.

Except in this, to-wit, that Allotting Agent Rankin did find and ascertain that Mary Tyndall had the prior and better claim to and was entitled to have allotted to her the N. E. ¼ of the S. E. ¼ of section 10, townsnip 25, range 7 east; and said allotting agent did further find upon investigation that Agnes Springer had a prior and better claim to, and was entitled to have allotted to her the N. W. ¼ of the S. E. ¼ of section 7, township 25, range 7 east; and that the said allotting agent did make the said allotments of the lands above described to Mary Tyndall and Agnes Springer respectively, and *these* defendants admitted that said allotments were duly approved by the Secretary of the Interior of the United States, and that patents therefor have been issued to the said Mary Tyndall and Agnes Springer respectively.

1095 10. And this defendant says that if there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered or denied, is not true to the knowledge or belief of this defendant, and this defendant denies that the said complainant is entitled to the relief or any part thereof in the said complaint demanded.

And this defendant prays leave to be dismissed with *their* reasonable costs and charges in this behalf most wrongfully sustained.

JNO. L. WEBSTER,
Sol. for Defendants.

W. S. SUMMERS,
U. S. Attorney.

Endorsed: Filed Oct. 3 1902 Geo. H. Thummel, clerk.

1096 Thereupon afterwards, to-wit: on the 1st day of October, 1902, depositions were filed in said case, which depositions are in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

ARTEMESIA FROST ET AL., Complainant-,
vs.
THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Defendants.
} Docket T, No. 462. Depositions.

Testimony taken in behalf of the complain-ts, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 26th day of September, 1902, the complainant- being represented by Messrs. Thomas L. Sloan and Charles E. Clapp and the defendants being represented by John L. Webster, Esq.

THOMAS L. SLOAN, produced as a witness in behalf of the complainant-, and after being first duly sworn, testified as follows:—

Direct examination by Mr. CHARLES E. CLAPP:

Q. Mr. Sloan, where do you reside?
A. At Pender, Nebraska.
Q. And how old are you?
A. 39 years past.
Q. You may state whether or not you are, or at any time have been a member of the Omaha tribe of Indians?
A. I have been, and am now, I think.
Q. Where have you lived since your birth?
A. I was born in St. Louis and lived there until—I do not know when I first came up. My mother brought me up. Within
1097 my recollection I came to the half breed recerve in 1873 with my grandmother, and stayed there excepting the time when I was away back there and came up with her to the Omaha reservation in the spring of 1881, since which time my home has either been at Pender or on the Omaha reservation, excepting a short time when I was away at school.
Q. What occupation have you followed on the Omaha reservation?
A. I first started in at herding cattle, breaking prairie, chopping wood, hauling saw logs; was employed at the store; was clerk and went to school, and took up the study of law, and was admitted to the bar in the spring of 1891. For a period of four years since then I was clerking at the Omaha and Winnebago agency, and the rest of the time I have been in the practice.
Q. Do you know Artemesia Frost, the complainant, in docket T, number 462?
A. Yes, sir.

Q. How long have you known her?
A. Since 1873, since the spring of 1873.
Q. Where has she resided since you have known her?
A. She was at first residing on land allotted to her on the half breed tract in 1873, and moved from there to the Omaha reservation. I think she moved up in 1874, and remained up here a year, or a year and a half, and returned to the half breed reservation. In 1881 she and two of her children came up and lived with my grandmother and I. The second oldest boy was sent to school at the Omaha agency during the winter while I was over there.
Q. What if anything Mr. Sloan do you know about the allotments that are claimed by Thomas Barada and Mary Sailors in cases numbered 400 and 461, docket T?
1098 A. I know more particularly about Mary Sailors than I do about Tom Barada. I know that he is living on a part of the land selected by him, and has been set aside by the allotting agent, and that over that part upon which she lives there is no controversy.
Q. Do you know when the selection was made by him?
A. I know the fact that father made a selection for him in the summer of 1881. I was present at the time. He pointed out the land to me and I know the circumstances surrounding it. I was living on the reservation at that time and it was selected in the vicinity where I lived.
Q. In the Barada case do you know anything about the selection of the land in question by Antoine Barada for his son Thomas Barada?
A. I just stated I know about the land.
Q. What relation is Thomas Barada to Mary Sailors?
A. He is an uncle of Mary Sailors.
Q. In respect to the Sailors case, what do you know about the selection of that land?
A. I marked that land out in the summer of 1881. The first mark that was ever made on it.
Q. For whom?
A. For Mary Sailors under the direction of Mrs. Peters.
Q. Who was Mrs. Peters?
A. Her mother.

Cross-examination waived.
Witness excused.
By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

1099 I hereby certify that the above named witness, Thomas L. Sloan, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of the witness and by me type-written, and that his signature to said deposition was waived. That said deposition was taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska, on the 26th day of September, 1902.

That both complainants and defendants were present by counsel at the taking of said deposition.

W. S. HELLER.
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
8 folio- at 20	1.60
1 certificate	.25
	$1.95

Endorsed: Filed Oct. 1 1902. Geo. H. Thummel, clerk.

1100 Thereupon afterwards, to-wit: on the 3rd day of October, 1902, a replication was filed in said case, which said replication is in the words and figures following, to-wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ARTEMESIA FROST, Complainant,
vs.
THE UNITED STATES, Defendant. } No. 462, Docket T.

The Replication of Artemesia Frost, Plaintiff, to the Answer of The United States, Defendant.

The repliant saving and reserving unto herself now and at all times hereafter, all, and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto, say- that *they* will aver, maintain and prove *in* her said bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by the repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things the repliant does and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray- as in and by her said bill of complaint she has already prayed.

H. C. BROME &
ANDERSON & KEEFE,
Solicitor- for Plaintiff.

Endorsed: Filed Oct. 3 1902 Geo. H. Thummel, clerk.

1101 Thereupon afterwards, to-wit: at the May term 1902 of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal " I " of said court, to-wit:

ARTEMESIA FROST and MARY FROST and Benjamin F. Frost, by Artemesia Frost, Their Next Friend, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Doc. T, No. 462. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parries, and the court being fully advised in the premises does find upon the merits of the case for the defendant and against the complainants.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

1102 Thereupon afterwards, to-wit: on the 13th day of October, 1903, an assignment of errors was filed in said case, which said assignment is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

ARTEMESIA FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Docket T, No. 462. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in finding and determining that Artemesia Frost received an allotment of land in the Nemaha reservation and was for that reason debarred from claiming a further allotment upon the Omaha reservation.

Second. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, made July 15, 1830, as meaning and intending that the taking of an allotment of land by a member of such tribe pursuant to article 10 of said treaty thereby extinguished the claim of such Indian to a further allotment

of land or further allotments or benefits in the tribal property as a member of such tribe.

Third. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, of July 15, 1830, as meaning and intending that half-breed members of the tribe
1103 who secured allotments of land in severalty in the Nemaha reservation under the terms of said treaty are not entitled to a second allotment under the act of 1882, although at the time of its passage they were residing on the reservation in the tribal relation.

Fourth. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Fifth. The court after construcing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Sixth. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Seventh. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Eighth. The court erred in holding that a person of mixed blood who did not reside -pon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the
1104 consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Ninth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Tenth. The court erred in holding and determining that Artemesia Frost and her children were not entitled to claim and have allotted to them the land described in plaintiff's bill of complaint, to-wit: the south half of the northwest quarter of section nine (9), in township twenty-five (25), north, of range seven (7) east; also 78 acres adjoining described as follows: Commencing at a point at the northeast corner of the south half of the northwest quarter of section nine (9); running thence north fifty-two (52) rods; thence west two hundred and forty (240) rods; thence south fifty-two (52) rods; thence east two hundred and forty (240) rods to the place of begin-

ning; the south half of the northeast quarter of section eight (8) in township twenty-five (25) north of range seven (7) east and the north half of the southeast quarter of section seven (7), in township twenty-five (25), north of range seven (7) east.

Eleventh. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Twelfth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

1105 Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

ARTEMESIA FROST,
Complainant,
By BROME & BURNETT,
Her Attorneys.

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1106 Thereupon, to-wit: on said the 13th day of October, 1903, a petition for appeal was filed in said case, which said petition is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

ARTEMESIA FROST, Complainant, vs. THE UNITED STATES OF AMERICA, Defendant. } Docket T, No. 462. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives *him*self to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

1107 Wherefore complainants prays for the allowance of an appeal in said cause to the Supreme Court of the United

States, and a transcript of the record and proceedings, duly authenticated, may be sent to said court.

ARTEMESIA FROST,
Complainant,
By BROME & BURNETT,
Her Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

Thereupon, to-wit: on the said 13th day of October, 1903, a bond was filed in said case, which said bond is in the words and figures following, to-wit:

1108 462, T.

Know all men by these presents, that we, Artemesia Frost, Charles Frost are held and firmly bound unto The United States of America in the full and just sum of one hundred dollars to be paid to the said The United States of America heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October, in the year of our Lord one thousand nine hundred and *ninety* three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Artemesia Frost plaintiff and The United States of America defendant, decree was rendered against the said Artemesia Frost and the said Artemesia Frost has obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The United States of America, citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Artemesia Frost shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

ARTEMESIA FROST. [SEAL.]
CHARLES FROST. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1109 Thereupon afterwards, to-wit: on said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1110 The United States of America to The United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Artemesia Frost is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2001 No. 462 United States circuit court, district of Nebraska. Artemesia Frost *vs.* United States Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

1110*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, by handing to and leaving a true and correct copy thereof with John L. Webster its attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1110*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he re-

ceived the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908.}

SUSAN M. BONNEVIER,
Notary Public.

1111 Thereupon afterwards, to-wit:—on the 9th day of October, 1899 bill in chancery was filed in said case, and refiled on the 11th day of July, 1901, which said bill is in words and figures following to-wit:—

In the Circuit Court of the United States within and for the District of Nebraska.

EDWARD KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant. } Complaint. No. 502, Docket "T."

To the honorable the judges of said court:

Edward Kuhn brings this his bill of complaint against the United States of America, and thereon your orator complains and says that the matter in dispute herein exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arises under the Constitution and laws of the United States and under certain treaties made under their authority as hereinafter more specifically set forth.

Further your orator says that he is a member of what is or until recently was known as the Omaha tribe of Indians and designated in the various statutes of the United States as the Omahas and the treaties herein set forth. That he is of what is known as mixed blood and a lineal descendant of one Michael Barada who inter-married with one Taegleha Hacienda, an Indian woman of the said tribe. That your orator and his ancestors back to the said Michael Barada and his said wife, have continually maintained their domicile with the said tribe, and maintained tribal relation therewith so long and so far as any tribal relations have been maintained by said
1112 tribe, and been recognized by the said tribe and the members thereof as a member of the said tribe and entitled to all its rights and privileges.

Further complaining your orator says that on the 16th day of March, 1854, a certain treaty was entered into by and between the United States and the Omaha tribe of Indians wherein and whereby the said tribe ceded to the United States certain lands situated in what is now the State of Nebraska, south of what has until recently been known as the Omaha reservation, and in consideration of the cession of the said land the United States agreed to pay and did pay unto the said tribe certain annuities for a certain period of years as set forth in said treaty in the words and figures following:

Art. 4. In the consideration and the payment for the country ceded and the relinquishment herein made the United States agree to pay the Omaha Indians, the several sums of money following:

1st. Forty thousand dollars per annum for a term of three years, commencing the first day of January, 1855.

2nd. Thirty thousand dollars per annum for a term of ten years next succeeding the three years.

3d. Twenty thousand dollars per annum for a term of fifteen years next succeeding the ten years.

4th. Ten thousand dollars per annum for a term of twelve years next succeeding the fifteen years.

All of which sums of money shall be paid to the Omahas or expended for their benefit under the direction of the President of the United States, who may from time to time determine at his discretion what proportion shall be expended and applied for their moral improvement and education.

1113 In addition to the foregoing agreements and covenants others are set forth in said treaty.

And your orator further says that among other things set forth, it was provided by art. 6, as follows: The President may from time to time at his discretion cause the whole of the portion of the land thereby reserved as he may think proper or of such land as may be selected in lieu thereof as provided in art. 1st to be surveyed into lots and to assign to the Indians of the said tribe as are willing to avail themselves of the privileges and who will locate upon the same as a permanent home if a single person over 21 years of age, one eighth of a section, to each family of two, one quarter of a section, to each family of three and not exceeding five, one half section, to each family of six and not exceeding ten, one section, and to each family of over ten in number one quarter section for each additional five members. And he may prescribe such rules and regulations as will insure to the family in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may at any time at his discretion after such person or family has made a location on the land assigned for a permanent home issue a patent to such person or family of such assigned land conditioned that the land shall not be aliened or leased for a longer period than two years and shall be exempt from levy, sale or forfeiture.

And all the matters and things together with other matters and things more fully appear in the said treaty as published under the authority of the United States in the Statutes at Large vol. 10, p. 1043, to which for greater certainty your orator begs leave to refer.

And your orator further says that on the 6th day of March
1114 1865 the said United States made and entered into a certain further treaty with the said tribe wherein and whereby the latter did cede to the United States a certain other tract of land north of what has been known as the Omaha reservation, for a consideration in said treaty named. Said treaty provided among other things that said tribe being desirous of promoting settled habits of industry and enterprise among themselves and of abolishing the tenure by which they then held their lands by assigning limited quantities thereof to the several members of the tribe, including their half or mixed blood relatives then residing with them, to be cultivated and used for their own individual benefit and use, it was therefore provided, agreed and stipulated that the remaining portion of their then reservation should be set apart for such purposes and that out of the same there should be assigned to each head of a family not exceeding one hundred and sixty acres of land, to each male member eighteen years of age and upwards, without family, not exceeding forty, and including in every case so far as practicable a reasonable proportion of timber. That the whole of said land assigned or unassigned should constitute and be known as the Omaha reservation, that said division and assignment of land in severalty should be made under the direction of the Secretary of the Interior and when approved by him should be final and conclusive, that certificates should be issued by the Commissioner of Indian Affairs for the tract so assigned specifying the name of the individuals to whom they had been assigned respectively, and that they were for the exclusive use of themselves, their heirs and descendants, and that said tract should not be leased or other-
1115 wise disposed of except to the United States or other members of the tribe under such rules and regulations as the Secretary of the Interior should prescribe, and that they should be exempt from taxation, levy, sale or forfeiture, until otherwise provided for by the Congress, which said last mentioned treaty was published by the authority of the United States in vol. 14 page 667 of the Statutes at Large, to which for greater certainty your orator begs leave to refer.

And your orator further says that by act of Congress approved the 7th day of August, 1882, and which was duly approved and accepted by the Omaha tribe of Indians in May, 1883, entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in Nebraska, and for other purposes," it was among other things provided that with the consent of said tribe expressed in open council the Secretary of the Interior should be authorized to cause to be surveyed and if necessary sold all that portion of the Omaha reservation lying west of a certain right of way thereupon granted by

the said tribe to the Sioux City and Nebraska Railroad Company. That the proceeds of said sale, after paying expenses incident to carrying out *of* the provisions of said act, should be placed to the credit of the said tribe in the Treasury of the United States and should bear interest at the rate of five per cent. per annum, which income should be expended for the said Indians under the direction of the Secretary of the Interior. And the said act further provides that the said Secretary should be hereby authorized, either through the agent of the said tribe or such other person as he should designate, to allot the lands lying east of the said right of way granted the said railroad in severalty to the Indians of the said tribe.

1116 To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person under eighteen years of age one sixteenth of a section, and that said allotments should be held and deemed in lieu of allotments provided for in the treaty of March 6th, 1865, provided that any Indian to whom any tract of land had been assigned and certificate issued and who was entitled to the same under the provisions of the said treaty if he had made valuable improvements thereon, and any Indian who being entitled to said assignment and said certificate under said treaty had settled and made valuable improvements upon the tract assigned to any Indian who had never improved or occupied said lands should have a preference right to select a tract upon which his improvements were situated for the allotment provided for by the said act and that all allotments should be selected by the Indians, heads of families selecting for their minor children and the agent selecting for each minor child. That upon the approval of the allotment as provided by the Secretary of the Interior he should cause patents to issue therefor, in the name of the allotees, which patents should be of the legal effect and declare that the United States does and will hold the land that is allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment should have been made, and in case of his decease of his heirs according to the laws of the State of Nebraska; and at the expiration of the said period the United States will convey the same by patent to the Indian or his said heirs in fee discharged of said trust and free of all charge and incumbrance and that the land

1117 should descend and be subject to partition according to the laws of the State of Nebraska. Said act was published by authority of the United States in vol. 22, in the Statutes at Large p. 341, to which for greater certainty your orator begs leave to refer.

And your orator further shows that his mother Celestine B. Kuhn was the daughter of Antoine Barada, who in turn was the son of Michael Barada and Taegleha Hacienda, who was as hereinbefore set forth an Indian woman of the said tribe; and your orator further shows that he has at all times since the year 1882, resided on the reservation, and that she attended the district schools and that

the tuition therefor was paid out of an appropriation of money made out of the tribal funds of the said Omaha tribe, that in the year 1883 your orator took possession of a tract of land on the Omaha reservation as hereinafter described, having during the year marked and plowed the said tract, and has ever since taking possession of the said tract of land occupied and cultivated without objection on the part of the said tribe, and as such member of the said tribe under and by virtue of the foregoing treaties and acts of Congress herein above described and set forth occupied and has been occupying ever since the year 1887 the following described lands within and a part of the said reservation, situated in the county of Thurston, and State of Nebraska, and within the jurisdiction of this court, to-wit: S. ½ of S. E. ¼ of sec. 19, twp. 25 N. range 7 east, that such last described land is a part of the land described and referred to by the treaties and acts of Congress hereinabove set forth, and has been surveyed in accordance with the said treaties and acts of Congress; that your orator has placed lasting and valuable improvements upon the above described premises, and that no person or persons claim or did claim the same when first selected by your orator in accordance
1118 with the laws relating thereto and the notice received from the council of the Omaha tribe of Indians, and that it is occupied by your orator and that he is the only person who has occupied the said land under a claim of allotment, and that certificate of allotment or selection has been issued to no one, nor has allotment been made by the United States to any one, nor has patent issued therefor, and that the defendant The United States of America has not opposed the claims of your orator by reason of its having been selected or allotted to any one.

And your orator further shows that notwithstanding the facts herein above set forth and notwithstanding that he is within and under the laws entitled to an allotment of — acres as selected and above described, the defendant by and through its officers and agent refuses and neglects to make the allotment to which he is entitled, and notwithstanding he is now and has been unlawfully denied — to which he is and now claims to be entitled, by virtue of said treaties and acts of Congress. And in that behalf your orator shows that the defendant notwithstanding the selection and occupancy of the above described parcel of land by your orator refuses through the Department of the Interior to approve such selection of land so by him made although your orator has notified the defendant, through its proper officers and agents, that such selection was his right under the said treaties and acts of Congress. And the defendant notwithstanding such selection and notification refuses and has refused to cause the patent to issue for such allotment and selection in the name of your orator and heirs and denies that they have any right to any parcel of land upon what was the Omaha tribe of Indians' reservation and denies that he is an Omaha Indian or of Omaha blood and entitled to an allotment under the treaties and acts of Congress herein above referred to.

1119 And your orator further shows that in accordance with the laws of the United States of America, the defendant The United States of America has detailed and appointed to the Omaha tribe of Indians, and as agent of the United States of America over what is known as the Omaha reservation, as hereinbefore described, Charles P. Mathewson, who has been duly appointed by the President of the United States and confirmed by the Senate of the United States as agent for the Omaha and Winnebago tribe of Indians who is now in charge of the said lands of the reservation, including those in controversy and herein now claimed by your orator, and that the said Charles P. Mathewson is now the person by the laws of the United States designated to superintend and supervise and make allotment of said land to those members or former members of the Omaha tribe of Indians entitled to such allotment under the foregoing treaties and statutes. And that Charles P. Mathewson and the Secretary of the Interior of the United States, as representing the defendant refuse and neglect to make to your orator the allotment of land to which he is entitled and that notwithstanding her rights in the matter he is now and has been unlawfully denied the allotment to him of the parcel of land he now claims, and that defendant refuses to make unto him the allotment and refuses to issue to him the certificate and patent therefor to which he is entitled under the laws and treaties of the United States, notwithstanding the fact that under the said laws and treaties and the practice heretofore prevailing in the allotment of said lands as adopted and pursued by said defendant, it is the duty of the agent assigned to the said tribe, to issue to each member thereof, whether of mixed or of full blood, a certificate showing the location of the land selected by said Indian and that thereupon it becomes and is the duty of
1120 the Secretary of the Interior to issue to such members a patent for the land so selected under the laws hereinbefore set forth, and notwithstanding the fact that your orator has in all respects complied with the rules and regulations and requirements adopted and prescribed by the defendant, The United States of America, relating to the selection and allotment of lands.

And your orator further shows unto your honors that by the act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in part or in whole of Indian blood or descent who are entitled to allotments of land under any act of Congress, or who claim to be so entitled under any allotment act or any grant made by Congress, may commence, prosecute or defend an action suit or proceeding, in relation to their right thereto in the proper circuit court of the United States, and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdictions involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty, the said act further provided that a judgment or decree of any such court in favor of any such claimant to an allotment of

lands should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by the authority of the United States in vol. 28 of the Statutes at Large on page 305, to which for greater certainty your orator begs leave to refer, and as amended by act of Feb. 6th, 1901.

Plaintiff further states that the defendant The United States of America claims that under and by virtue of the 4th art. of the treaty of March 6th, 1865, it was provided that the assignment be
1121 made in limited quantities to the individual members of the said tribe out of the land held by the said tribe in common, was confined to the members thereof of full blood, "including their half and mixed blood relatives, then residing with them."

And the defendant claims that the plaintiff and his ancestors were not residing on the reservation at the time and therefor- not entitled to land under the 4th art., of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Plaintiff admits that himself and his ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive him of the right of his residence on the reservation and the right of allotment under the treaty of March 6th 1865, or his rights of allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of the said treaty and the laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865 as certified to by the chiefs and head men of Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871 contained the names of numerous half and mixed bloods, relatives of the Omaha tribe, who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to, that under the provisions of the act of Congress of August 7th, 1882, many half breed and mixed blood relatives of the Omaha tribe received allotments who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, nor at the time of making
1122 the schedule by the chiefs, the agent, the superintendent, nor at the time of the approval of the Secretary of the Interior, and some of whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation at any time, but who at all times and at the time of making the treaty of March 6th, 1865 and ever since had never resided on the reservation.

Plaintiff further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for under the 4th art. of said treaty had already been pro-

vided for by the treaty of March 16th, 1854 and which right of selection and assignment was granted to all members of the tribe alike. Plaintiff further states that the defendant claims that he or his ancestors have received an allotment of land under and by virtue of the treaty of July 15th, 1830, the 10th art. thereof and by the acceptance of the said allotment under the policy of the Indian Office the plaintiff is not entitled to a second allotment or further participation in the tribal rights of the Omaha tribe of Indians; plaintiff admits that his ancestors received an allotment under the 10th art. of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted nor given to him in consideration of the relinquishment of any right other than those to which he was entitled to on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10 art. of the treaty of July 30th, 1830, sums of money which were
1123 accepted in consideration of the relinquishment to the United States of all of their rights and interests in and to the deficiency in the half breed reservation under the provisions of the act of Congress section 6th, ch. 66 of the 3d session of the 35th Congress 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of allotments under the treaty of July 30, 1830, have received assignments of land on the present reservation under the provisions of the 4th art. of the act of the 6th of March 1865, and the subsequent act of Congress of August 7th, 1882; that this plaintiff has not in any manner assigned or relinquished his right of claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Government nor by the enactment of any law authorized this plaintiff, nor his ancestors, nor any of the members of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this plaintiff or any member of this tribe has been accepted or approved by the United States or any of its officers.

Plaintiff further states that at the time of making the treaty of March 6th, 1865, he was a minor and if the requirements as claimed as to residence at that time was necessary it was inapplicable to him by reason of that fact

Wherefore your orator shows to your honors that he is without remedy at law and remediless in the premises unless relieved by your honors in this court of equity and he therefore prays the aid of the court in the premises and that the defendant may appear and answer this your orator's bill of complaint, but without oath (answer under oath being expressly waived); that it be ordered and
1124 decreed that your orator and his children are entitled to have allotted to them the lands described more particularly in

this your orator's bill of complaint and that the defendant The United States of America be ordered and required to make and issue to your orator the patent contemplated and provided by the foregoing treaties and acts of Congress and to recognize in all respects the rights of your orator in and upon the lands so now by him occupied and that his rights and those of his children thereto under and by virtue of the said laws of the United States and treaties be forever established and that your orator and his children may have such other and further relief as may be agreeable to equity and good conscience.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court and to be directed to the United States of America therein and thereby commanding it on a certain day and under a certain penalty therein to be limited, personally to appear before this court, then and there to answer all and singular the premises and to stand to and perform and abide such order and decrees as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHAS. E. CLAPP, *Of Counsel.*

Endorsed: Filed Oct. 9, 1899, Oscar B. Hillis, clerk, by R. C. Hoyt, deputy, Refiled Jul- 11, 1901, Geo. H. Thummel, clerk.

1125 Thereupon afterwards, to-wit:—on the 21st day of September, 1901, answer was filed in said case, which said answer is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

EDWARD KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.

Doc. "T," No. 502. Answer to Amended Bill of Complaint.

The Answer of The United States of America, Defendant, to the Amended Bill of Complaint of Edward Kuhn, Complainant.

This defendant now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for answer thereto, and unto so much and — parts thereof as this defendant is advised is or are material or necessary for it to make answer unto this defendant for answer, says:

1. This defendant denies that the complainant is an Omaha Indian and denies that complainant is or ever was a member of the

Omaha tribe of Indians of Nebraska. Upon the contrary, this defendant avers that the said complainant is a white man, and a citizen of the United States, and that his ancestors were white persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and this defendant denies that complainant or his ancestors ever maintained or sustained tribal relations with the
1126 Omaha tribe of Indians of Nebraska, and denies that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

This defendant for further answer avers that the complainant claims to trace his lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but this defendant is not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to his proof in that regard.

That there was born to the said Michael Barada and his wife in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a free born white person, and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language, but never learned to speak and did not speak the language of the Omaha tribe.

That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vien continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years, until some time after the approval of the act of Congress of August 7, 1882, (22 U. S. Stats at Large, 341) hereinafter more particularly referred to.

1127 That to the said Antoine Barada and his wife Josephine there was born a daughter named Celestine (the mother of this complainant) and the said Celestine was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Celestine Barada, so being a white woman and a citizen of the United States, married a full blood white man named John Kuhn

and a citizen of the United States. There was born to the said John Kuhn and his wife Celestine, a son named Edward Kuhn, who is the complainant herein, and the said Edward Kuhn being such white person and citizen of the United States taking the status of his father continued to reside in the city of St. Louis and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when he came to the Omaha reservation with his parents, with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.'

2. This defendant for further answer avers that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress 1882; that by the terms of article 4, of the treaty of 1865 (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded complainant, being only one sixteenth Indian blood, and he not
1128 then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882. (22 U. S. Statutes at Large p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and this defendant further avers that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or his ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

1129 3. This defendant further answering says: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters being of the same family with this plaintiff, and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or descendants of said parties, so far as I know their names." and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant. That the said Antoine Barada was the grandfather of this complainant, and the said Celestine Kuhn and John Kuhn were the parents of this com-
1130 plainant, and Stella Kuhn and Ethel Kuhn Rutledge are sisters of this complainant.

4. This defendant further answering says: That after the act of Congress of August 7, 1882 (22 U. S. Statutes at Large, p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive

allotments of land on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding the cases of the absentee mixed bloods, the following is quoted from a
1131 letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband, (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas relates to the treaty of March 6, 1865 (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

1132 If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more

of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not — all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, and the action of the department thereon.

1133 The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case. The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relatives now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.]

1134 Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people *were* unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born upon the duly certified census roll of 1871, of their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. This defendant further avers that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father, Michael Barada, to-wit: William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians,
1135 and as a result thereof, the Omaha tribe of Indians caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington, was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8 and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

1136 This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

1137 If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865 (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect 1138 to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

87—453

1139 That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. This defendant further avers that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such facts to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors, and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington the Commissioner of Indian Affairs, repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter Peters, Luke Sailors and Frank Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as she was of that class.

1140 This defendant further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. This defendant further avers that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters, becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent,

Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which suits, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against
1141 the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. This defendant for further answer avers that under article 10, of the treaty of July 15, 1830 (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5 (4) of an act of Congress approved July 31, 1854 (10 U. S. Statutes at Large 332), a patent was issued to complainant's ancestor for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of the ancestor and his descendants including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians and to any further or other allotment of land.

10. This defendant further avers that the preference right to select lands for allotment under the act of Congress, August 7, 1882 (22 U. S. Statutes at Large, 342) is confined by section 5, of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the treaty with the Omahas concluding March 6, 1865, and Barada and Kuhn families had not received and were not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof, the said Barada and Kuhn families did not have and could not acquire any such interest in the lands described in the amended petition as would give them a preference over other Indians in the selection of land for allotment.

11. This defendant for further answer avers that the complainant did not select for allotment, and did not occupy or make any
1142 improvements on any of the lands described in the amended bill of complaint; and the defendant further avers that the complainant never lived upon the Omaha reservation until after the act of 1882, and never selected, improved, or cultivated any land whatsoever, upon the Omaha Indian reservation, and is not entitled to have or select any lands upon the Omaha Indian reservation for allotment.

12. This defendant for further answer admits that the United States allotting agent did reserve for the Kuhn family including

this complainant, certain lands including the S. ½ of the S. E. ¼ of section 19, township 25, range 7, pending the result of this litigation, but that the reservation of lands for the Kuhn family was not and is not intended or to be construed as a recognition of the right of the complainant to have or select any part of said lands for allotment.

13. This defendant for further answer avers that the United States allotting agent in the course of his official duty and upon investigation did find that the complainant was not entitled to an allotment of lands on the Omaha Indian reservation, and made an official report of his said finding to the Commissioner of Indian Affairs, and which said report and finding, that the complainant was not entitled to an allotment of lands on the Omaha Indian reservation was approved by the Commissioner of Indian Affairs, and the Secretary of the Interior, and which said finding and judgment remains in full force and effect.

14. And this defendant says that if there is any other matter cause or thing in the said complainant's bill of complaint contained
1143 material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of this defendant, and this defendant denies that the complainant is entitled to the relief or any part thereof in the said complaint demanded.

JNO. L. WEBSTER, *Of Counsel.*

W. S. SUMMERS,
U. S. Attorney.

Endorsed: Filed Sep. 21, 1901, Geo. H. Thummel, clerk.

1144 Thereupon afterwards, to-wit: on the 22nd day of September 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

EDWARD KUHN
vs.
UNITED STATES OF AMERICA. } No. 502, Doc. "T."

The Replication of Edward Kuhn, Plaintiff, to the Answer of United States of America, Defendant.

This replicant, saving and reserving to himself, all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer, of

the defendant, for replication thereunto, saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHARLES E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22, 1902, Geo. H. Thummel, clerk.

1145 Thereupon afterwards, to-wit:—at the May 1902 term of said court and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal No. 1 of said court, to-wit:

EDWARD KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Doc. "T," No. 502. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendant and against the complainant. It is therefore

Ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902. Geo. H. Thummel, clerk.

1146 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, assignments of error were filed in said case, which said assignment of errors is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

EDWARD KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendants.
} Docket "T," No. 502. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

1147 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Edward Kuhn was not entitled to claim and have allotted to him the land described in plaintiff's bill of complaint, to-wit:

The east half of the northeast quarter of section nineteen (19) in township twenty-five (25) north of range seven (7) east.

1148 Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

EDWARD KUHN,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1149 Thereupon, to-wit:—on the 13th day of October, 1903, petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

EDWARD KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Docket "T," No. 502. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November. 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an ap-
1150 peal in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

EDWARD KUHN,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

And now, on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903. Geo. H. Thummel, clerk.

Thereupon, to-wit:—on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following to-wit:

1151 502, "T."

Know all men by these presents, that we, Edward Kuhn & Jno. A. Wachter, are held and firmly bound unto The United States of America, in the full and just sum of one hundred dollars to be paid to the said United States of America, heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Edward Kuhn plaintiff and The United States of America, defendant judgment was rendered against the said Edward Kuhn and the said Edward Kuhn has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said — citing and admonishing it to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Edward Kuhn shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

EDWARD KUHN. [SEAL.]
JNO. A. WACHTER. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903, Geo. H. Thummel, clerk.

1152 Thereupon afterwards, to-wit: on the said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1153 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Edward Kuhn is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and *ninety* three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #2000. No. 502 United States circuit court, district of Nebraska. Edward Kuhn *vs.* United States. Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

1153*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, by handing to and leaving a true and correct copy thereof with John L. Webster, its attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1153*b* UNITED STATES OF AMERICA, *District of Nebraska, County of Douglas,* } ss:

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and

State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, — full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

1154 Thereupon afterwards, to-wit:—on the 9th day of October, 1899 bill in chancery was filed in said case, which said bill was refiled on the 11th day of July, 1901, and is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

ETHEL KUHN RUTLEDGE, Complainant, *vs.* THE UNITED STATES OF AMERICA, Defendant. } No. 503, Docket "T." Complaint.

To the honorable the judges of said court:

Ethel Kuhn Rutledge brings this her bill of complaint against the United States of America, and thereupon your orator complains and says that the matter in dispute herein exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arises under the Constitution and laws of the United States and under certain treaties made under their authority as hereinafter more specifically set forth.

Further your orator says that she is a member of what is or until recently was known as the Omaha tribe of Indians in Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and the treaties hereinafter set forth. That she is of what is known as mixed blood and is a lineal descendant from one Michael Barada, who inter-married with one Taegleha Hacienda, an Indian woman of the said tribe. That your orator and her ancestors back to the said Michael Barada and his
1155 said wife, have continually maintained their domicile with the said tribe, and maintained tribal relations therewith so long and so far as any tribal relations have been maintained by the

said tribe, and been recognized by the said tribe and the members thereof as a member of the said tribe and entitled to all its rights and privileges.

Further complaining your orator says that on the 16th day of March, 1854 a certain treaty was entered into by and between the United States and the Omaha tribe of Indians wherein and whereby the said tribe ceded to the United States certain lands situated in what is now the State of Nebraska, south of what has recently been known as the Omaha reservation, and in consideration of the cession of the said land the United States agreed to pay and did pay unto the said tribe certain annuities for a certain period of years as set forth in the said treaty in the words and figures following:

Art. 4. In the consideration and payment for the country ceded and the relinquishment herein made the United States agree to pay the Omaha Indians, the several sums of money following:

1st. Forty thousand dollars per annum for a term of three years, commencing the first day of January, 1855.

2nd. Thirty thousand dollars per annum for a term of ten years succeeding the three years.

3rd. Twenty thousand dollars per annum for a term of fifteen years next succeeding the ten years.

4th. Ten thousand dollars per annum for a term of twelve years next succeeding the fifteen years.

All of which sums of money shall be paid to the said Omahas or expended for their benefit under the direction of the Presi-
1156 dent of the United States, it was provided by art. 6, as follows: The President may from time to time at his discretion cause the whole of the portion of the land thereby reserved as he may think proper or of such land as may be selected in lieu thereof as provided in art. 1st, to be surveyed into lots and to be assigned to the Indians of said tribe as are willing to avail themselves of the privileges and who will locate upon the same as a permanent home, if a single person over 21 years of age, one eighth of a section, to each family of two one quarter of a section, to each family of three not exceeding five one half section, and to each family of six not exceeding ten, one section, and to each family over ten in number one quarter section for each additional five members.

And he may prescribe such rules and regulations as will insure to the family in case of the death of the head thereof the possession and enjoyment of such permanent home and the improvements thereon. And the President may at any time at his discretion after such person and family has made a selection and the land assigned for a permanent home issue a patent to such person or family of such assigned land conditioned that the land shall not be aliened or leased for a longer period than two years and shall be exempt from levy, sale or forfeiture.

And all the matters and the things together with other matters and things more fully appear in the said treaty as published under the authority of the United States in the Statutes at Large vol. 10,

p. 1045 to which for greater certainty your orator begs leave to refer.

And your orator further says that on the 6th day of March 1865, the said United States made and entered into a certain further treaty with the said tribe wherein and whereby the latter did
1157 cede to the United States a certain other tract of land north of what has been known as the Omaha reservation, for a consideration in said treaty named. Said treaty provided among other things that said tribe being desirous of promoting settled habits of industry and enterprise among themselves and of abolishing the tenure by which they then held their lands by assigning limited quantities thereof to the several members of the tribe, including their half or mixed blood relatives then residing with them, to be cultivated and used for their own individual use and benefit, it was therefore provided, agreed and stipulated that the remaining portion of their then reservation should be set apart for such purposes and that out of the same there should be assigned to each head of a family not exceeding one hundred and sixty acres, to each male member eighteen years of age, and upwards, without family, not exceeding forty acres, and including in every case so far as practicable, a reasonable proportion of timber. That the whole of said land, assigned or unassigned, should constitute and be known as the Omaha reservation, that said division and assignment of land in severalty should be made under the direction of the Secretary of the Interior and when approved by him should be final and conclusive, that certificates should be issued by the Commissioner of Indian Affairs for the tract so assigned specifying the names of the individuals to whom they had been assigned respectively and that they were for the exclusive use of themselves, their heirs and descendants, and that said tract should not be leased or otherwise disposed of except to the United States or other members of the tribe under such rules and regulations as might be prescribed by the Secretary of the Interior, and that they should be exempt from taxation, levy, sale or forfeiture until otherwise provided for by the Congress which
1158 last mentioned treaty was published by the authority of the United States in vol. 14, of the Statutes at Large on page 667, to which for greater certainty your orator begs leave to refer.

And your orator further says that by act of Congress approved August 7th, 1882, and which was duly approved and adopted by the Omaha tribe of Indians in May, 1883, entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska," it was among other things provided that with the consent of the said tribe expressed in open council the Secretary of the Interior should be authorized to cause to be surveyed and if necessary sold, all that portion of the Omaha reservation lying west of a certain right of way thereupon granted by the said tribe through the said reservation to the Sioux City and Nebraska Railroad Company.' That the proceeds of said sale, after paying expenses incident to carrying out of the provisions of the

said act, should be placed to the credit of the said tribe in the Treasury of the United States and should bear interest at the rate of five per centum per annum which income should be expended for the said Indians under the direction of the Secretary of the Interior And the said act further provides that the said Secretary should be hereby authorized, either through the agent of the said tribe or such other person as he might designate, to allot the lands lying east of the right of way granted the said railroad in severalty to the said Indians of the said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person under eighteen years of age one sixteenth of a section; and that said allotments should be deemed and held in lieu of allotments pro-
1159 vided for in said treaty of March 6th, 1865, provided that any Indian to whom any tract of land has been assigned and certificate issued and who was entitled to the same under the provisions of the said treaty if he had made valuable improvements thereon, and any Indian who being entitled to said assignment and certificate under said treaty had settled and made valuable improvements upon the tract assigned to any Indian who had never improved or occupied said land should have a preference right to select a tract upon which his improvements were situated for the allotment provided for by the said act and that all allotments should be selected by the Indians, heads of families selecting for their minor children and the agent selecting for each orphan child. That upon the approval of the allotment as provided for by the Secretary of the Interior he should cause patents to issue therefor in the name of the allottees, which patents should be of the legal effect and declare that the United States does and will hold the land that is allotted for a period of twenty-five years in trust for the sole use and benefit of the Indian to whom the allotment should have been made, and in case of his decease of his heirs according to the laws of the State of Nebraska; and at the expiration of the said period the United States will convey the same by patent to the said Indian or his said heirs in fee discharged of the said trust and free of all charge and incumbrance, and that the — should descend and be subject to partition in accordance with the laws of the State of Nebraska. Said act was published by the authority of the United States in vol. 22 of the Statutes at Large page 341, to which for greater certainty your orator begs leave to refer.

And your orator further shows that her mother was Celestine B. Kuhn, who in turn was the daughter of Antoine Barada, who
1160 in turn was the son of Michael Barada and Taegleha Hacienda, who was as hereinbefore set forth, an Omaha Indian woman, and member of the said tribe; and that your orator further shows that she has at all times since the year 1882 resided on the reservation, except that she is now temporarily absent therefrom with her husband; that she attended the district schools and that

the tuition therefor was paid out of an appropriation of money made out of the tribal funds of the said Omaha tribe of Indians, that in the year 1883 your orator took possession of a tract of land on the Omaha reservation as hereinafter described, having during the year marked and plowed the said tract, and has ever since taking possession of the said tract of land occupied and cultivated it without objection on the part of the said tribe, and as such member of the said tribe under and by virtue of the foregoing treaties and acts of Congress hereinabove described and set forth occupied and has been occupying ever since the year 1887 the following described lands within and a part of the said reservation, situated in the county of Thurston, and State of Nebraska, and within the jurisdiction of this court, to-wit: N. ½ of S. E. ¼ sec. 19 twp. 25 N. range 7 east; that such last described land is a part of the land described and referred to by the treaties and acts of Congress hereinabove set forth, and has been surveyed in accordance with the said treaties and acts of Congress; that your orator has placed lasting and valuable improvements upon the above described premises, and that no person or persons claim or did claim the same when first selected by your orator in accordance with the laws relating thereto and the notice received from the counsel of the Omaha tribe of Indians, and that it is occupied by your orator and that she is the only person who has occupied the said land under a claim of allotment, and that certificate
1161 of allotment or selection has been issued to no one, nor has allotment been made by the United States to any one, nor has patent issued therefor, and that the defendant The United States of America has not opposed the claims of your orator to said land by reason of its having been selected or allotted to any person.

And your orator further shows that notwithstanding the facts hereinabove set forth and notwithstanding that she is within and under the laws entitled to an allotment of eighty acres as selected and above described, the defendant by and through its officers and agent refuses and neglects to make the allotment to which she is entitled, and notwithstanding she is now and has been unlawfully denied the allotment to which she is and claims to be lawfully entitled, by virtue of said treaties and acts of Congress. And in that behalf your orator shows that the defendant notwithstanding the selection and occupancy of the above described parcel of land by your orator, refuses through the Department of the Interior to approve such selection of land so made by her although your orator has notified the defendant, through its proper officers and agents, that such selection was her right under the said treaties and acts of Congress. And the defendant notwithstanding such selection and notification refuses and has refused to cause the patent to issue for such allotment and selection in the name of your orator and heirs and denies that they have any right to any parcel or tract of land upon what was the Omaha tribe of Indians reservation and denies that she is an Omaha Indian or of Omaha blood and entitled to an

allotment under the treaties and acts of Congress hereinabove referred to.

And your orator further shows that in accordance with the laws of the United States of America, the defendant The United
1162 States of America has detailed and appointed to the Omaha tribe of Indians and as agent of the United States of America over what is known as the Omaha reservation, as hereinbefore described, Charles P. Mathewson, who has been duly appointed by the President of the United States and confirmed by the Senate of the United States as agent for the Omaha and Winnebago tribes of Indians who is now in charge of the said lands of the reservation, including those in controversy and now claimed by your orator and that the said Charles P. Mathewson is now the person by the laws of the United States to superintend and supervise and make allotments of said land to these members or former members of the Omaha tribe of Indians entitled to such allotment under the foregoing treaties and statutes. And that said Charles P. Mathewson and the Secretary of the Interior of the United States, as representing the defendant refuse and neglect to make to your orator the allotment of land to which she is entitled and that notwithstanding their rights in the premises she is now and has been unlawfully denied the allotment to her of the parcel of land which she now claims, and that the defendant refuses to make unto her the allotment and refuses to issue to her the certificate and paten theretor to which she is entitled under the laws and treaties of the United States, notwithstanding the fact that under the said laws and treaties and the practice heretofore prevailing in the allotment of said lands as adopted and pursued by said defendant, it is the duty of the agent assigned to the said tribe to issue to each member thereof, whether of mixed or of full blood, a certificate showing the location of the land selected by said Indian and that thereupon it becomes and is the duty of the Secretary of the Interior to issue to such members a patent for the lands so selected under the laws hereinbefore set forth,
1163 and notwithstanding the fact that your orator has in all respects complied with the requirements, rules and regulations adopted and prescribed by the defendant, The United States of America, relating to the selection and allotment of lands.

And your orator further shows unto your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotments of land under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their right thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdictions involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any

law or treaty and the said act further provided that a judgment or decree of any such court in favor of any such claimant to an allotment of lands should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by the authority of the United States in vol. 28 of the Statutes at Large on page 305, to which for greater certainty your orator begs leave to refer, and as amended by act of Congress of Feb. 6th, 1901.

Plaintiff further states that the defendant The United States of America claims that under and by virtue of the 4th article of the treaty of March 6th, 1865, it was provided that the assignment — be made in limited quantities from the lands held by the
1164 said tribe in common to the individual members thereof, was confined to the members thereof of full blood "including their half and mixed blood relatives now residing with them," but the defendant claims that the plaintiff and her ancestors were not residing on the reservation at the time and therefor- not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Plaintiff admits that herself and her ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive her of the right of her residence on the reservation and the rights of allotment under the treaty of March 6th, 1865 or her rights to allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of the said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th 1865 as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December 1870, and submitted and approved by the Superintendent of Indian Affairs January 21st, 1871 and approved by the Secretary of the Interior January 26th, 1871 contained the names of numerous half and mixed bloods, relatives of the Omaha tribe, who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to, that under the provisions of the act of Congress of August 7th, 1882, many half breed and mixed blood relatives of the Omaha tribe received allotments who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865 nor at the time of making the selections in the year 1870, nor at the time of the ap-
1165 proval of the schedule by the chiefs, the agent, the superintendant, nor at the time of the approval of the Secretary of the Interior and some of whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation at any time, but who at all times and at the time of making the treaty of March 6th 1865 and ever since had never resided on the reservation.

Plaintiff further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for under the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Plaintiff further states that the defendant claims that the plaintiff or her ancestors have received an allotment of land under and by virtue of the treaty of July 15th, 1830, the 10th art. thereof and by the acceptance of said allotment under the policy of the Indian office the plaintiff is not entitled to a second allotment or further participation in the tribal rights of the Omaha tribe of Indians; plaintiff admits that her ancestors received an allotment of land under the 10th art. of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians that the quantity so assigned to her was one half the amount provided by said treaty and that the said allotment was not accepted by her nor given to her in consideration of the relinquishment of any right other than those to which she was entitled *to* on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the
1166 10th art. of the treaty of July 30th, 1830, sums of money — were accepted in consideration of the relinquishment to the United States of all of their rights and interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th ch. 66 of the third session of the 35th Congress 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments under the treaty of July 30th, 1830 have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March 1865 and the subsequent act of Congress of August 7th 1882; that this plaintiff has not in any manner assigned or relinquished her right of claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Government nor by the enactment of any law authorized this plaintiff, nor her ancestors nor any of the members of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this plaintiff or any member of this tribe has been accepted or approved by the United States or any of its officers.

Plaintiff further states that at the time of making the treaty of March 6th, 1865, she was a minor and if the requirements as claimed by the defendant as to residence at that time was necessary it was inapplicable to her because of that fact.

Wherefore your orator shows to your honors that she is without remedy at law and remediless in the premises unless relieved by your honors in this court of equity and she therefore prays the
1167 aid of the court in the premises and that the said defendant may appear and answer this your orator's bill but without

oath (answer under oath being expressly waived). That it be ordered and decreed that your orator and her children are entitled to have allotted to them the lands described more particularly in this your orator's bill of complaint and that the defendant The United States of America be ordered and required to make *the* issue to your orator the patent contemplated and provided by the foregoing treaties and acts of Congress and to recognize in all respects the rights of your orator to and upon the lands so now by her occupied and that her rights and those of her children thereto under and by virtue of the said laws of the United States and treaties be forever established and that your orator and her children may have such other and further relief as may be agreeable to equity and good conscience.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court and to be directed to the United States of America therein and thereby commanding it on a certain day and under a certain penalty therein to be limited, personally to appear before this court, then and there to answer all and singular the premises and to stand to and to perform and abide such order and decree as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHAS. E. CLAPP, *Of Counsel.*

Endorsed: Filed Oct. 9, 1899, Oscar B. Hillis, clerk, by R. C. Hoyt, deputy. Re-filed Jul-. 11, 1901, Geo. H. Thummel, clerk.

1168 Thereupon afterwards, to-wit:—on the 21st day of September, 1901 answer was filed in said case, which said answer is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

ETHEL KUHN RUTLEDGE, Complainant, *vs.* THE UNITED STATES OF AMERICA, Defendant.	Doc. "T," No. 503. Answer to Amended Bill of Complaint.

The Answer of The United States of America, Defendant, to the Amended Bill of Complaint of Ethel Kuhn Rutledge, Complainant.

This defendant now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for answer thereto, and unto so much and —

parts thereof as this defendant is advised is or are material or necessary for it to make answer unto this defendant for answer, says:

1. This defendant denies that the complainant is an Omaha Indian and denies that complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary, this defendant avers that the said complainant is a white woman, and a citizen of the United States, and that her ancestors were white persons and citizens of the United States, and that her said ancestors
1169 were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and this defendant denies that complainant or her ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and denies that they ever participated in the benefits and other rights of the said tribe, and denies that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

This defendant for further answer avers that the complainant claims to trace her lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but this defendant is not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to her proof in that regard.

That there was born to the said Michael Barada and his wife in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a free born white person, and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha tribe.

That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife
1170 Josephine Vien continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years, until some time after the approval of the act of Congress of August 7, 1882 (22 U. S. Statutes at Large, 341) hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Celestine (the mother of this complainant), and the said Celestine was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was

not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and — never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Celestine Barada, so being a white woman and a citizen of the United States, married a full blood white man named John Kuhn, and a citizen of the United States. There was born to the said John Kuhn and his wife Celestine, a daughter named Ethel, who is the complainant herein, and the said Ethel, being such white person and citizen of the United States taking the status of her father continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when she came to the Omaha reservation with her parents, with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

2. This defendant for further answer avers that the complainant did not live with the Omaha tribe of Indians on the
1171 reservation at the time of the treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded complainant, being only one sixteenth Indian blood, and *he* not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882 (22 U. S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and this defendant further avers that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians, and transmitted and submitted to the Interior Department on or about December 30, 1870, and ap-
1172 proved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or her ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior

Department, that neither the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. This defendant further answering says: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern,

William Barada, Antoine Barada, Euphrasia Barada Peters,
1173 Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or

any of the immediate antecedants or descendants of said parties, so far as I know their names" and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant: that the said Antoine Barada was the grandfather of this complainant, and the said Celestine B. Kuhn and John Kuhn were the parents of this complainant, and Edward Kuhn and Stella Kuhn are brother and sister of this complainant.

4. This defendant further answering says: That after the act of Congress of August 7, 1882 (22 U. S. Statutes at Large, p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotments of lands upon the said reservation, *and* said department

ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

1174 5. "The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celeste Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection- of land in severalty under the treaty aforesaid, and a description of their respective selections.

1175 Said schedule was duly certified by the agent of the tribe under date of December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of

Congress to do anything contrary to the wishes of the In-
1176 dians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omaha-.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

1177 Article 4, of the treaty of 1865, defines those entitled to land to be "the members of the tribe including their half breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people *were* unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born upon the duly certified census roll of 1871, of their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

1178 6. This defendant further avers that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father, Michael Barada, to-wit: William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about the intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent to Washington; that it was decided according to our treaty and the Peters family had to go away.

1179 They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8 and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay there too. We have asked people who know the law, what we should *to* to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out
1180 on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by
1181 them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865 (14 Statutes 668) was made. (The — article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allot ments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha
1182 reservation, under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. This defendant further avers that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such facts to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

1183 On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders, and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter Peters, Luke Sailors and Frank Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as she was of that class.

This defendant further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are — entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. This defendant further avers that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont,

1184 Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were

made defendants and in which suits, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States for the district of Nebraska, entered a decree against the complainants in said suit and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. This defendant for further answer avers that under article 10, of the treaty of July 15, 1830 (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5 (4) of an act of Congress approved July 31, 1854 (10 U. S. Statutes at Large, 332) a patent was issued to complainant's ancestor for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of the ancestor and his descendants including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians and to any further or other allotment of land.

10. This defendant further avers that the preference right to select lands for allotment under the act of Congress, August 7, 1882 (12 U. S. Statutes at Large, 342) is confined by section 5 of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the
1185 treaty with the Omahas concluding March 6, 1865, and Barada and Kuhn families had not received and were not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof, the said Barada and Kuhn families did not have and could not acquire any such interest in the lands described in the amended petition as would give them a preference over other Indians in the selection of land for allotment.

11. This defendant for further answer avers that the complainant did not select for allotment, and did not occupy or make any improvements on any of the lands described in the amended bill of complaint; and the defendant further avers that the complainant never lived upon the Omaha reservation until after the act of 1882, and never selected improved, or cultivated any land whatsoever, upon the Omaha Indian reservation, and is not entitled to have or select any lands upon the Omaha Indian reservation for allotment.

12. This defendant for further answer admits that the United States allotting agent did reserve for the Kuhn family including this complainant, certain lands including the N. ½ of the S. E. ¼ of section 19, township 25, range 7, pending the result of this litigation, but that the reservation of land for the Kuhn family was not and is

not intended or to be construed as a recognition of the right of the complainant to have or select any part of said lands for allotment.

13. This defendant for further answer avers that the United States allotting agent in the course of his official duty and upon investigation did find that the complainant was not entitled to an allotment
1186 of lands on the Omaha Indian reservation, and made an official report of his said finding to the Commissioner of Indian Affairs, and which said report and finding, that the complainant was not entitled to an allotment of lands on the Omaha Indian reservation was approved by the Commissioner of Indian Affairs, and the Secretary of the Interior, and which said finding and judgment remains in full force and effect.

And this defendant says that if there is any other matter, cause or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of this defendant, and this defendant denies that the complainant is entitled to the relief or any part thereof in the said complaint demanded.

W. S. SUMMERS,
U. S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Sep. 21, 1901, Geo. H. Thummel, clerk.

1187 Thereupon afterwards, to-wit:—on the 22nd day of Septem ber, 1902, replication was filed in said case, which said rep lication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ETHEL KUHN RUTLEDGE
v.
UNITED STATES OF AMERICA. } No. 503, Doc. "T."

The Replication of Ethel Kuhn Rutledge, Plaintiff, to the Answer of United States of America, Defendant.

This replicant, saving and reserving to herself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer, of the defendant for replication thereunto, saith that she doth and will aver, maintain and prove her said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and

insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

THOMAS L. SLOAN,
CHARLES E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22, 1902 Geo. H. Thummel, clerk.

1188 Thereupon afterwards, to-wit:—at the May 1902 term of said court and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal No. 1 of said court to-wit:

ETHEL KUHN RUTLEDGE, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant. } Doc. "T," No. 503. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendant and against the complainant. It is therefore

Ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8, 1902, Geo. H. Thummel, clerk.

1189 Thereupon afterwards, to-wit: on the 13th day of October, 1903, assignment of errors, were filed in said case, which said assignments of errors are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

ETHEL KUHN RUTLEDGE, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant. } Docket "T," No. 503. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

1190 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Ethel Kuhn Rutledge was not entitled to claim and have allotted to her the land described in plaintiff's bill of complaint, to-wit:

The west half of the northeast quarter of section nineteen (19) in township twenty-five (25) north, of range seven (7) east.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendant and against the complainant.

1191 Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

ETHEL KUHN RUTLEDGE,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN, *Her Attorneys.*

Endorsed: Filed Oct. 13 1903. Geo. H. Thummel, clerk.

1192 Thereupon, to-wit:—on the 13th day of October 1903 petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

ETHEL KUHN RUTLEDGE, Complainant, vs. THE UNITED STATES OF AMERICA, Defendant. } Docket "T," No. 503. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives herself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States, and
1193 that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

ETHEL KUHN RUTLEDGE,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN, *Her Attorneys.*

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

Thereupon, to-wit:—on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following, to-wit:—

1194 503, T.

Know all men by these presents, that we, Ethel K. Rutledge & Jno. A. Wachter, are held and firmly bound unto The United States of America in the full and just sum of one hundred dollars to be paid to the said United States of America heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Ethel K. Rutledge plaintiff and The United States of America defendant judgment was rendered against the said Ethel K. Rutledge and the said Ethel K. Rutledge has obtained an appeal of the said court to reverse the — in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Ethel K. Rutledge shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

ETHEL K. RUTLEDGE. [SEAL.]
JNO. A. WACHTER. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of—
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1195 Thereupon afterwards, to-wit: on the said 13th day of October, 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1196 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an

appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Ethel Kuhn Rutledge is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] # 1199. No. 503. United States circuit court, district of Nebraska. Ethel Kuhn Rutledge *vs.* United States Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

1196*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, by handing to and leaving a true and correct copy thereof with John L. Webster, its attorney personally at Omaha in said district on the 21 day of Oct, A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1196*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

SUSAN M. BONNEVIER,
Notary Public.

1197 Thereupon afterwards, to-wit:—on the 9th day of October, 1899, bill in chancery was filed in said case, which said bill was refiled on the 4th day of September, 1901, and is in words and figures following to-wit:—

In the Circuit Court of the United States within and for the State of Nebraska.

CHARLES A. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} No. 504, Docket "T." Complaint.

To the honorable the judges of said court:

Charles A. Frost brings this his bill of complaint against the United States of America, and thereupon your orator complains and says that the matter in dispute herein exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arises under the Constitution and laws of the United States and under certain treaties made under their authority as hereinafter more specifically set forth.

Further your orator says that he is a member of what is or until recently was known as the Omaha tribe of Indians in Nebraska, being the tribe of Indians designated as the Omaha- in the various statutes of the United States and the treaties herein set forth. That he is of what is known as mixed blood and is a lineal descendant from one Michael Barada who inter-married with one Taegleha Hacienda an Indian woman of the said tribe. That your orator and his ancestors back to said Michael Barada and his said wife, have continually maintained their domicile with said tribe, and main-
1198 tained tribal relations therewith so long and so far as any tribal relations have been maintained by said tribe, and been recognized by the United States of America, the said tribe and the members thereof as a member of said tribe and entitled to all its rights and privileges.

Further complaining your orator says that on the 16th day of March, 1854, a certain treaty was entered into by and between the United States and the Omaha tribe of Indians wherein and whereby the said tribe ceded to the United States certain land situated in what is now the State of Nebraska, south of what has recently been known as the Omaha reservation, and in consideration of the cession of the said land the United States agreed to pay and did pay unto the said tribe certain annuities for a certain period of years as set forth in said treaty in the words and figures following:

Art. 4. In the consideration of and the payment for the country ceded and relinquishment herein made the United States agree to pay the Omaha Indians, the several sums of money following:

1st. Forty thousand dollars per annum for a term of three years, commencing the first day of January, 1855.

2nd. — for a term of ten years succeeding the three years.

3d. Twenty thousand dollars per annum for a term of fifteen years next succeeding the ten years.

4th. Ten thousand dollars per annum for a term of twelve years, next succeeding the fifteen years.

All of which several sums of money shall be paid to the Omahas or expended for their benefit under the direction of the President of the United States, who may from time to time determine at his discretion what proportion shall be applied to and be expended for their moral improvement and education.

1199 In addition to the foregoing covenants and agreements others are contained and set forth in said treaty.

And your orator further says that among other things in said treaty set forth, it was provided by art. 6, as follows: The President may from time to time at his discretion, cause the whole of the portion of the land thereby reserved as he may think proper or of such land as may be selected in lieu thereof as provided in art. 1st, to be surveyed into lots and to assign to the Indians of said tribe as are willing to avail themselves of the privileges and who will locate upon the same as a permanent home, if a single person over 21 years of age, one eighth of a section, to each family of two, one quarter of a section, to each family of three and not exceeding five, one half section, to each family of six and not exceeding ten, one section, and to each family over ten in number one quarter section for each additional five members. And he may prescribe such rules and regulations as will insure to the family in case of death of the head thereof, the possession and enjoyment of such permanent home and the improvement thereon. And the President may at any time at his discretion, after such person and family has made a selection — the land assigned for a permanent home — a patent to such person or family of such assigned land conditioned that the land shall not be aliened or leased for a longer period than two years and shall be exempt from levy, sale or forfeiture.

And all the matters and the things together with other matters and things more fully appear in the said treaty as published under the authority of the United States in the Statutes at Large vol. 10 p. 1043, to which for greater certainty your orator begs to refer.

1200 And your orator further says that on the sixth day of March, 1865, the said United States made and entered into a certain further treaty with the said tribe wherein and whereby the latter did cede to the United States a certain other tract of land north of what has been known as the Omaha reservation, for a consideration in said treaty named. Said treaty provided among other things that said tribe being desirous of promoting settled habits of industry and enterprise among themselves and of abolishing the tenure by which they then held their lands by assigning limited quantities thereof to the several members of the tribe, including their half or mixed blood relatives then residing with them, to be cultivated and used for their own use and benefit, it was there-

for- provided, agreed and stipulated that the remaining portion of their then reservation should be set apart for such purposes and that out of the same there should be assigned to each head of a family not exceeding one hundred and sixty acres of land, to each male member eighteen years of age and upwards, without family, not exceeding forty, and including in every case so far as practicable a reasonable proportion of timber. That the whole of said land assigned or unassigned, should constitute and be known as the Omaha reservation, that said division of land in severalty should be made under the direction of the Secretary of the Interior and when approved by him should be final and conclusive and that certificates should be issued by the Commissioner of Indian Affairs for the tract so assigned specifying the name- of the individuals to whom they had been assigned respectively, and that they were for the exclusive use of themselves, their heirs and descendants, and that said tract should not be leased or other-
1201 wise disposed of except to the United States or other members of the tribe under such rules and regulations as might be prescribed by the Secretary of the Interior, and that they should be exempt from taxation, levy, sale or forfeiture, until otherwise provided for by the Congress, which said last mentioned treaty was published by authority of the United States in vol. 14, of the Statutes at Large on page 667 to which for greater certainty your orator begs to refer.

And your orator further says that by act of Congress approved the 7th day of August, 1882, which was duly approved and accepted by the Omaha tribe of Indians in May, 1883, entitled "An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska and for other purposes," it was among other things provided that with the consent of said tribe expressed in open council the Secretary of the Interior should be authorized to cause to be surveyed and if necessary sold all that portion of the Omaha reservation lying west of a certain right of way thereupon granted by the said tribe through the reservation to the Sioux City and Nebraska Railroad Company. That the proceeds of said sale, after paying expenses incident to carrying out of the provisions of said act, should be placed to the credit of the said tribe in the Treasury of the United States and should bear interest at the rate of five per cent. per annum which income should be expended for the said Indians under the direction of the Secretary of the Interior. And the said act further provides that the said Secretary should be authorized, either through the agent of the said tribe or such other person as he might designate, to allot the lands lying east of the said right of way granted the said railroad in severalty to the Indians of said tribe.

1202 To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person under eighteen years of age one sixteenth of a section, and that said

allotments should be deemed and held in lieu of allotments provided for in said treaty of March 6th, 1865, provided that any Indian to whom had been assigned a tract of land and certificate issued and who was entitled to the same under the provisions of said treaty if he had made valuable improvements thereon, and any Indian who being entitled to said assignment and certificate under said treaty had settled and made valuable improvements upon the tract assigned to any Indian who had never improved or occupied said lands should have a preference to select a tract upon which his improvements were situated for the allotment provided for by this act and that all allotments should be selected by the Indians, heads of families selecting for minor children and the agent selecting for each orphan child. That upon the approval of the allotment as provided by the Secretary of the Interior he should cause patents to issue therefor in the name- of the allo-tees, which patents should be of the legal effect and declare that the United States does and will hold the land that is allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment should have been made, and in case of his decease of his heirs according to the laws of the State of Nebraska; and at the expiration of the said period the United States will convey the same by patent to the said Indian or his said heirs in fee discharged of said trust and free of all charge and incumbrance, and that the land should descend and be subject to partition in accordance with
1203 the laws of the State of Nebraska. Said act was published by authority of the United States in vol. 22 of the Statutes at Large on page 341, to which for greater certainty your orator begs leave to refer.

And your orator further shows that his mother, Artemesia Frost, was recognized as a member of the Omaha tribe of Indians and that she received an allotment on the Nemaha half breed tract and that she has lived on the present reservation and does live upon the said reservation at the present time. That his mother since the treaty of 1865 has been recognized as a member of the Omaha tribe of Indians and has been enrolled upon the tribal roll and drawn annuity money for herself and some of her children and that she has the benefit of tribal property, the mill and other common property of the tribe.

That his mother was the daughter of Margaret Sloan who was also recognized as a member of the tribe who received the benefits of tribal property under the treaty of 1854 and the later treaty of March 6th, 1865, that your orator has selected the following described land for allotment of which he is now in possession, S. E. ¼ section 8, twp. 25, N. range 7 E. of the 6th P. M., in Nebraska; that such described property is a part of the land described and referred to in the treaties and acts of Congress herein above set out and has been surveyed in accordance with the treaties and acts of Congress; that your orator has placed valuable improvements upon the above described premises, and that no person or persons claim or did

claim the same when first selected by your orator in accordance with the laws relating thereto and the notice received from the council of the Omaha tribe of Indians, and that it is occupied by your orator and that he is the only person who has occupied the said land under a claim for allotment, and that
1204 certificate of allotment or selection of said land has been issued to no one nor has allotment been made by the United States to any person whatever, nor has patent issued therefor, and that the defendant The United States of America has not opposed the claim of your orator to said land by reason of its having been selected or allotted to any person.

Your orator further has been recognized as a member of the Omaha tribe by the United States in admitting him as a pupil at the Omaha agency boarding school maintained for the exclusive use of the members of the Omaha tribe of Indians and requiring of him strict attendance. That he has been sent by the U. S. Government to school at Hampton, Va., all expense of his attendance and transportation being paid by them.

And your orator further shows that notwithstanding the facts herein above set forth and notwithstanding that he is within and under the provisions of the law entitled to an allotment of eighty acres as selected and above described, the defendant by and through its officers and agent refuses and neglects to make the allotment to which he is entitled, and notwithstanding he is now and has been unlawfully denied the allotment to which he is and claims to be lawfully entitled by virtue of said treaties and acts of Congress. And in that behalf your orator shows that the defendant notwithstanding the selection and occupancy of the above described parcel of land by your orator, refuses through the Department of the Interior to approve such selection of land so made by him although your orator has notified the defendant, through its proper officers and agents, that such selection was his right under the said treaties and acts of Congress. And the defendant notwithstanding such selec-
1205 tion and notification refuses and has refused to cause the patent to issue for such allotment and selection in the name of your orator and heirs and denies that they have any right to any parcel or tract of land upon what was the Omaha Indian reservation and denies that he is an Omaha Indian or of Omaha blood and entitled to an allotment of land under the treaties and acts of Congress herein above referred to.

And your orator further shows that in accordance with the laws of the United States of America, the defendant The United States of America has detailed and appointed to the said Omaha tribe of Indians, and as agent of the United States of America over what is known as the Omaha reservation, as hereinabove described Charles P. Mathewson, who has been duly appointed by the President of the United States and confirmed by the Senate of the United States as agent for the Omaha and Winnebago tribes of Indians who is now in charge of said lands of the reservation, including those

in controversy including those herein now claimed by your orator and that the said Charles P. Mathewson is now the person designated by the laws of the United States to superintend and supervise and make allotment of said land to these members or former members of the Omaha tribe of Indians entitled to allotment under the foregoing treaties and statutes. And that said Charles P. Mathewson and the Secretary of the Interior of the United States. as representing the defendant refuse and neglect to make to your orator the allotment of the land to which he is entitled and that notwithstanding their rights in the premises they are now and have been unlawfully denied the allotment to them of the said parcel of land which he now claims, and that the defendant refuses to make unto him the allotment and refuses to issue to him certificate therefor to which he is entitled under the laws and treaties of the United States, not-
1206 withstanding that under the laws and treaties and the practice heretofore prevailing in the allotment of said land as adopted and pursued by said defendant, it is the duty of the agent assigned to said tribe to issue to each member thereof, whether of mixed or of full blood, a certificate showing the location of land selected by said Indian and that thereupon it becomes and is the duty of the Secretary of the Interior to issue to such members a patent for the lands so selected under the laws hereinbefore set forth, and notwithstanding the fact that your orator has in all respects complied with the requirements, rules and regulations adopted and described by the defendant, The United States of America, relating to the selection and allotment of the said lands.

And your orator further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of lands under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their right thereto in the proper circuit court of the United States, and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305, to which for greater certainty your orator begs
1207 to refer.

Plaintiff further states that the defendant The United States of America claims that under and by virtue of the 4th art. of the treaty of March 6th, 1865, it was provided that the assignment

— be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood, "including their half breed and mixed blood relatives now residing with them," and the defendant claims that the plaintiff and his ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Plaintiff admits that himself and his ancestors were temporarily absent from the reservation at the time, but claim- that such absence did not deprive him of the right of his residence on the reservation and the rights of allotment under the treaty of March 6th 1865, or his rights to allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865 as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December 1870, and submitted and approved by the superintendent of Indian affairs January 21st, 1871, and approved by the Secretaryof the Interior, January 26th, 1871 contained names of numerous half and mixed bloods relatives of the Omaha tribe, who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of
1208 making the schedule referred to that under the provisions of the act of August 7th, 1882, many half breed and mixed blood relatives of the Omaha tribe received allotments who were not residing on the Omaha reservation at the time of making the treaty of March 6th 1865, nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent — the superintendent, nor at the time of the approval of the Secretary of the Interior, and some of whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation at any time, but at all times and at the time of the treaty of March 6th, 1865, and ever since never resided on the reservation.

Plaintiff further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Plaintiff further states that the defendant claims that the plaintiff for his ancestors has received allotment of land under and by virtue of the treaty of July 15th, 1830, the 10th art. thereof and by the acceptance of said allotment under the policy of the Indian Office the plaintiff is not entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; plaintiff admits that his ancestors received an allotment of land under the provisions

of the 10th art. of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by her nor given to her in consid-
1209 eration of the relinquishment of any other right than those to which she was entitled *to* on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th, 1830, sums of money — were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66 of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March 1865, and the subsequent act of Congress of August 7th, 1882; that this plaintiff has not in any manner assigned or relinquished his right of claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Government nor by the enactment of any law authorized this plaintiff, nor his ancestors, nor any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this plaintiff or any member of this tribe has been accepted or approved by the United States or any of its officers.

Plaintiff further states that at the time of making the treaty of March 6th, 1865 he was a minor and if the requirement as claimed by the defendant as to residence at that time was necessary it was inapplicable to him by reason of that fact.

1210 Wherefore your orator shows to your honors that he is without remedy at law and remediless in the premises unless relieved by your honors in this court of equity and he therefore prays the aid of the court in the premises and that the said defendant may appear and answer this your orator's bill but without oath, answer under oath being expressly waived. That it be ordered and decreed that your orator and his children are entitled to have allotted to them the lands described more particularly in this your orator's bill of complaint and that the defendant The United States of America be ordered and required to make *the* issue to your orator the patent contemplated and provided by the foregoing treaties and acts of Congress and to recognize in all respects the rights of your orator to and upon the lands so now by him occupied and that his rights and those of his children thereto under and by virtue of the laws of the said United States and treaties be forever established and that your orator and his children may have such other and further relief as may be agreeable to equity and good conscience.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court to be directed to the United States of America, therein and thereby commanding it on a certain day and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decrees therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHAS. E. CLAPP, *Of Counsel.*

Endorsed: Filed Oct. 9, 1899, Oscar B. Hillis, clerk, by R. C. Hoyt, deputy. Refiled Sep. 4, 1901, Geo. H. Thummel, clerk.

1211 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, deposition — behalf — plaintiff was filed in said case, which said deposition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CHARLES A. FROST, Complainant, vs. THE UNITED STATES OF AMERICA, Defendant. } Docket "T," No. 504. Depositions.

Testimony taken in behalf of the complainant, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at Pender, in the State of Nebraska, on this the 22nd day of August, 1902, the complainant being represented by Thomas L. Sloan, Esq., and the defendant by John L. Webster, Esq.

CHARLES FROST a witness, produced in behalf of the complainant, being first duly sworn, deposes and says, as follows:

Direct examination by Mr. THOMAS L. SLOAN:

Q. Have you ever been in attendance at any of the Indian schools?

A. Yes sir.

Q. State what schools they were, and what time you were in attendance upon them?

A. I attended the Haskell Institution in 1885.

Q. Is that an exclusively Indian school?

A. Yes sir.

Q. Who else were there at the time you were there of your family?

1212 A. There was three of us; four.

Q. State who they were?

A. My oldest brother, Philemon H. Frost; and my sister, Mrs. McCreary, Sarah F. McCreary, and myself, and a younger brother Leonard Frost.
Q. How long were you there?
A. About one year.
Q. How long did you go to school at the Omaha agency?
A. I should judge about half a year.
Q. About three months?
A. Perhaps nearer four months.
Q. Who was that school maintained for?
A. Indians.
Q. What Indians?
A. The Omaha Indians.
Q. By whom was it maintained?
A. By the Government, I presume.
Q. What other school have you attended—Indian school?
A. The Hampton Institution.
Q. Where is that?
A. Virginia.
Q. By whom were you sent there?
A. By the Government.
Q. How long was you there?
A. Three years.
Q. Who paid your transportation and your tuition while there?
A. The Government.

Cross examination waived.
Witness excused.

1213 By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witness, Charles Frost, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of the said witness, and by me typewritten, and that the signature of the witness is waived by the parties. That said deposition was taken pursuant to the agreement of parties at Pender, Nebraska, on the 22nd day of August, 1902. That both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Notary Public.

My fees:

Swearing 1 witness	.10
6 folios at 20c.	1.20
	$1.30

P'd by counsel for pl'ffs.
WM. S. HELLER.

Endorsed: Filed Sep. 3, 1902, Geo. H. Thummel, clerk.

1214 Thereupon afterwards, to-wit:—on the 23rd day of September, 1902, answer was filed in said case, which said answer is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CHARLES A. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.

Doc. "T," No. 504. Answer to Amended Bill of Complaint.

The Answer of The United States of America to the Amended Bill of Complaint of Charles A. Frost, Complainant.

This defendant now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections *of* the said complainant's said amended bill of complaint contained, and for answer thereto, and unto so much and — parts thereof as this defendant is advised is or are material or necessary for it to make answer unto this defendant for answer, says:

1. This defendant denies that the complainant is an Omaha Indian and denies that complainant is or ever was a member of the Omaha tribe of Indians of Nebraska, upon the contrary this defendant avers that the said complainant is a white man and a citizen of the United States, and that his ancestors were white

1215 persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and this defendant denies that the ancestors of complainant ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and denies that they ever participated in the benefits and other rights of the said tribe; and denies that they were recognized by the said tribe or by the United States as members of the Omaha tribe of Indians.

This defendant for further answer avers that Charles A. Frost, complainant, claims to trace his lineage back to Michael Barada who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but this defendant is not advised whether she was of Omaha Indian blood or the blood of some other Indian tribe and therefore leaves the complainant to his proof in that regard.

That there was born to the said Michael Barada and his wife in the year 1811, a daughter by the name of Margaret Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of her father and thereby became and was a white person and a citizen

of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Margaret Barada lived in the city of St. Louis with her parents until the year 1854, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

1216 That the said Margaret Barada intermarried with one Thomas Sloan, the grandfather of this complainant, and that said Thomas Sloan was a free born white man of Irish nationality and a citizen of the United States, and that said Margaret and her husband Thomas Sloan continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years until some time after the approved act of Congress of August 7, 1882 (22 U. S. Statutes at Large, 341), hereinafter more particularly referred to.

That to the said Thomas Sloan and his wife Margaret there was born a daughter named Artemesia Sloan (the mother of this complainant) and the said Artemesia Sloan was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians and lived in the city of St. Louis and was never on the Omaha reservation. That the said Artemesia Sloan so being a white woman and a citizen of the United States, married a full blood white man named Leonard Frost, and a citizen of the United States. There was born to the said Leonard Frost and his wife Artemesia, a son named Charles A. Frost, who is the complainant herein; and the said Charles A. Frost being such white person and citizen of the United States, took the status of his father and continued to reside in the city of St. Louis and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when he came to the Omaha reservation with his parents with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

1217 2. This defendant for further answer avers that complainant did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress of 1882; that by the terms of article 4, of the treaty of 1865 (14 U. S. Statutes at Large, 667) the assignment of lands in severalty only included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded complainant, being only one sixteenth Indian blood, and he not living with the Omaha tribe of Indians; that the provision of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, p. 342), provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who

were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865; and this defendant further avers that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha
1218 tribe of Indians, and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of complainant or his ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. This defendant further answering says: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherin Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters were complainants, and Robert H. Ashley, and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, said Thomas L. Sloan made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and fur-
1219 ther certified to the court, "that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or descend-

ants of said parties, so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including these complainants.

4. This defendant further answering, says: That after the act of Congress of August 7, 1882 (22 U. S. Statutes at Large, p. 341) the said Thomas L. Sloan and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Thomas L. Sloan and his ancestors, did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher as United States allotting agent caused the claim of Thomas L. Sloan and his ancestors to be investigated, and being of the opinion as the result of said investigation that Thomas L. Sloan and his ancestors, were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* on April 28, 1884, reported the facts thereon to the Interior Department, and said department, under date of May 9, 1884, ruled and determined that Thomas L. Sloan and his ancestors were not members of the Omaha tribe of Indians, and were not entitled to have or re-
1220 ceive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. This defendant further avers that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit:—William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors, and others persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, and the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claim under similar state of facts, including the said Thomas L. Sloan from the Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst. upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with
1221 lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th, 1865 (14 Statutes 668) was made. (The 4th article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe a number of mixed bloods from the old Nemaha reservation, and *and* among them the Peters family came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882 none but members of the tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

1222 In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him and any other persons who may be thereon under a similar state of facts from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

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That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

6. This defendant further avers that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and Walter Peters failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including Thomas L. Sloan, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon Thomas L. Sloan, Frank Peters,
1223 William Barada, Luke Sailors and Walter Peters to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force, and under date of October 17, 1890, the United States Indian agent made the following report to the Commissioner of Indian Affairs regarding Margaret Sloan, Thomas Sloan that he did, "on the 24th day of October, 1890, give written notice to Thomas L. Sloan and Margaret Sloan to leave the Omaha reservation under instruction of office order of August 27, 1890.

I would further say in explanation that the Omaha Indians in council on 7th day of October, discussed this matter with the Sloans, and it was almost unanimous opinion and wish that they be removed from the reservation the same as Peters and others. I am unable to find where the Sloans have any more right than the others mentioned and take them to be of "like class" as mentioned in yours of the 27th of August."

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which said recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Frank Peters, Luke Sailors and Walter Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters, and which included Thomas L. Sloan as he was of that class.

1224 This defendant further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors and

their families belong to a class of trespassers on the Omaha reservation, and are — entitled to lands or benefits under the act of August 7, 1888, and should not be enrolled by him or allowed to share in the payment of annuities.

7. This defendant further avers that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters, becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, We-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken, and subsequently in the spring of 1893, the said circuit court of the
1225 United States for the district of Nebraska entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree dismissed the complainants' bill and which said judgment and decree was not appealed from, but remained in full force and effect.

8. This defendant further avers that afterward the said Margaret Sloan and Thomas Sloan endeavored to have themselves adopted into the Omaha tribe of Indians, and to have themselves recognized by the Interior Department as members of the Omaha tribe of Indians, and to that end submitted to the department certain petitions purporting to be signed by certain members of the Omaha tribe of Indians; that under date of September 6, 1894 the department ruled that the said Margaret Sloan and Thomas L. Sloan should not be admitted to membership in the Omaha tribe of Indians, and accordingly so ordered, and in which order and opinion the department held as follows:

"Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure separate and distinct from their alleged rights as Omaha Indians by blood, and that such alleged right is not necessarily a test for such adoption, there remains the right to admission by the free will and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seem to be in proper form, and to express the desire of a majority of the members of the tribe that the persons in question shall be

placed upon the rolls of the tribe, and be admitted to all the rights and privileges of other members thereof.

1226 Besides the opposing petition hereinbefore referred to, the department is in receipt of recent information which shows that of the one hundred and fifty-seven persons whose names appear on the six petitions presented with your letter, only seventy now favor the claimants; that eleven others have since assented to their adoption, making eighty-one in all now favorable; that twenty-four of the signatures thereon were not written by the parties whose names are given, nor was the use of their names authorized by them, that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women—neither of whom have any voice in such matters; that one of the nine members of the council purporting to have signed one of the petitions, did not sign nor authorize the use of his name, and further that there are about one hundred and eighteen male members of the tribe, of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petitions in question, the facts seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe, that the Sloans be not admitted to membership and it is so ordered.

In reference to that part of your report wherein you state that Thomas L. Sloan has held and improved a tract of land since 1881 or 1882, on the Omaha reservation, it would seem that he is doing so in defiance of any legal authority of occupation."

That after the above order and ruling of the department, the counsel for Margaret Sloan and Thomas L. Sloan applied to the department for reconsideration of the adoption case, and the

1227 department under date of November 17, 1896, re-affirmed this ruling and among other things therein said:

"It is not denied, nor has it ever been, that the Sloans, mother and son, are of part Omaha Indian blood. The tribe recognized them as such and made provision for them, with others, by the treaty of 1830, and in the opinion of the department, and the Omahas themselves, their claim- as such mixed bloods were extinguished by the lands given them under the terms of the tenth article of the treaty named.

* * * * * * *

The claims of Margaret and her son William E. were extinguished prior to the birth of Thomas L. It is nowhere alleged or claimed that the latter is the offspring of a mother of Indian blood, much more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claims of Margaret and Thomas L. are based upon their birthright as Omaha Indians and upon their alleged adoption in recent years by the tribe.

The birthright claim of Margaret has been extinguished. Thomas L. never had such claim. Neither of them have any claim by adop-

tion, never having been regularly, fairly or properly adopted by the tribe, as was shown by department letter of September 6, 1894.

Notwithstanding that Mr. Breckenridge has advised the department by letter dated the 30th ultimo, of his withdrawal as attorney for the claimants, I have caused this review of the case to be made, and adhere to the opinion expressed in department letter of September 6, 1894, that the persons named have no valid, legal claims to membership with the Omaha tribe of Indians.

And defendant avers that the above ruling of the Department of the Interior established the fact that Margaret Sloan and her
1228 descendants, the plaintiffs herein, then were not and had not theretofore been members of the Omaha tribe of Indians, and the defendant avers that the said Margaret Sloan and her descendants the plaintiff- herein, are not and never have been members of the Omaha tribe of Indians.

9. This defendant for further answer avers that under art. 10, of the treaty of July 15, 1830 (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5 (4) of an act of Congress approved July 31, 1854 (10 U. S. Statutes at Large, 332) patents were issued to Margaret Sloan and Artemesia Frost for three hundred and twenty acres of land, each on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Margaret Sloan and her descendants including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

This defendant further avers that Artemesia Frost, the mother of complainant, made application for an allotment of land and her pretended claim was reported to the Interior Department, and the Interior Department adjudged and determined on the 21st day of June, 1897, as follows:

"By her own admission, Mrs. Frost's birthright claim has been extinguished. To admit her present claim would be an injustice to those of the tribe who have never received allotments and who alone are entitled to participation in the division of the lands in the diminished reserve; would also be against public policy, and a violation of the rules and regulations of the department, which prohibit more than one allotment to an Indian for any reason whatever."

1229 10. This defendant further avers that the complainant never occupied or improved the S. E. ¼ of section 8, township 25, north range — E.; that the complainant was born in Richardson county, State of Nebraska, and continued to live in Richardson county, State of Nebraska, and has never lived upon the Omaha Indian reservation, and was not on the reservation at the time of the allotting of lands to the Omaha Indians, and was not on the Omaha reservation at the date of the commencement of this suit, and did not make a selection of the lands claimed.

This defendant further avers that Sarah F. McCreary, Philemon Frost, Charles A. Frost, Leonard Frost, Mary Frost and Frank Frost are all children of Artemesia Frost and Leonard Frost (husband and wife), and that the United States allotting agent consulted with Leonard Frost and Artemesia Frost the parents, and found it desireable that if lands were to be allotted to the Frost family, they should be adjoining lands. and such was the wish of Leonard Frost and wife, whereupon the United States allotting agent made reservation of lands for the Frost family, including the complainant, pending the result of this litigation in section 8 and 9, tp. 25, range 7, and which reservation has been made upon the surveyed maps in the office of the Commissioner of Indian Affairs awaiting the final determination of this suit.

11. This defendant further avers that the United States allotting agent, appointed by the Interior Department to investigate selections and make allotments of land, investigated, ascertained and found as a fact, that the complainant was not entitled to an allotment of any of the lands claimed by her and reported his said findings to the Interior Department, and which said findings and report have been approved by the said department.

1230 12. And this defendant says that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of this defendant, and this defendant denies that the said complainant is entitled to the relief or any part thereof in the said complaint demanded.

And this defendant prays leave to be dismissed with *their* reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
U. S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Sep. 23, 1902, Geo. H. Thummel, clerk.

1231 Thereupon afterwards, to-wit: on the 23rd day of September, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

CHARLES FROST
vs.
UNITED STATES OF AMERICA. } No. 504, Doc. "T."

The Replication of Charles Frost, Plaintiff, to the Answer of United States of America, Defendant.

This replicant, saving and reserving to himself, all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, for replication thereunto, saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 23, 1902, Geo. H. Thummel, clerk.

1232 Thereupon afterwards, to-wit:—at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal No. 1 of said court, to-wit:

CHARLES A. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant. } Doc. "T," No. 504. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises

does find upon the merits of the case for the defendant and against the complainant. It is therefore

Ordered, adjudged and decreed that the injunction heretofore granted herein, be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant, taxed, at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902. Geo. H. Thummel, clerk.

1233 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, assignment of errors, were filed in said case, which said assignments of errors are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CHARLES FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Docket "T," No. 504. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

1234 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent

required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Charles Frost was not entitled to claim and have allotted to him the land described in plaintiff's bill of complaint, to-wit: The southeast quarter of section eight (8) in township twenty-five (25) north of range seven (7) east of the 6th P.M.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendant and against the complainant.

1235 Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

CHARLES FROST,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1236 Thereupon, to-wit:—on the 13th day of October 1903 petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

CHARLES FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Docket "T," No. 504. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

1237 Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

CHARLES FROST,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903. Geo. H. Thummel, clerk.

Thereupon, to-wit:—on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following, to-wit:

1238 504, T.

Know all men by these presents, that we, Charles Frost and Sarah F. McCreary, Philemon H. Frost are held and firmly bound unto The United States of America, in the full and just sum of one hundred dollars to be paid to the said United States of America heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Charles Frost plaintiff and The United States of America, defendant judgment was rendered against the said Charles Frost and the said Charles Frost has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Charles Frost shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

CHARLES A. FROST. [SEAL.]
SARAH F. McCREARY. [SEAL.]
PHILEMON H FROST. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903, Geo. H. Thummel, clerk.

1239 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto the following of which is the original:

1240 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Charles Frost is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #1998. No. 504 United States circuit court, district of Nebraska. Charles Frost *vs.* United States. Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

1240a Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, by handing to and leaving a true and correct copy thereof with John L. Webster, its attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1240b UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.
Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

SUSAN M. BONNEVIER,
Notary Public.

1241 Thereupon afterwards, to-wit: on the 30th day of April, 1901, amended bill of complaint was filed in said case, which said amended bill is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CELESTINE B. KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.

No. 505, Doc. "T."
Amended Bill of Complaint.

To the honorable the judges of the said court:

Celestine B. Kuhn brings this, her bill of complaint against the United States of America, and thereupon your oratrix complains and states that she is a member of what is, or until recently was known as the Omaha tribe of Indians of Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and in the treaties hereinafter set forth. That she is what is known as mixed blood and is a lineal descendant from one Michael Barada who intermarried with one Taegleha Hacienda, an Indian woman of the said tribe. That your oratrix and her ancestor back to said Michael Barada and his said wife, have continually maintained their domicile with the said tribe and maintained tribal relation therewith so long and so far as any tribal relations have been maintained by the said tribe, and has participated in the property and other rights of the said tribe and been recognized by the said tribe and the members thereof as a member of the said tribe and entitled to all its rights and privileges.

1242 And further complaining your oratrix says that on the 16th day of March, A. D. 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof they received their present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including the ancestor of your oratrix. All of which matters and other things more fully appear in said treaty as published in United States Statutes at Large vol. 10, page 1043, to which for greater certainty your oratrix refers.

Your oratrix further says that on the 6th day of March A. D. 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14, page 667, to which for greater certainty your oratrix begs to refer.

And further showing your oratrix says that on the 7th day of August A. D. 1882, an act was approved that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation, either through the agent of said tribe or such other person as he

might designate in severalty to the Indians of said tribe. To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one
1243 eighth of a section, to each other person under eighteen years of age one sixteenth of a section. That all allotments should be *selected by the Indians*, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large, vol. 22, page 341, to which for greater certainty your oratrix refers.

Your oratrix further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act in December, 1884 and at subsequent times since.

Your oratrix further shows that on the 3rd day of March, A. D. 1893 an act of Congress was passed amending or extending the act of August 7th, 1882, providing that with the consent of the Omaha tribe of Indians, expressed in open council, further allotments should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893, but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council, May, 1899, and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instruction to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the land claimed. That said special agent did not follow his
1244 instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimant.

And your oratrix further shows that she is a daughter of Antoine Barada, who was the son of Michael Barada and Taegleha Hacienda, who was as herein before set forth an Indian woman and a member of said tribe. That ever since the year 1882 your oratrix has continuously resided upon the Omaha reservation. That your oratrix first selected land in the year 1882 and was upon the reservation at the time the Omahas consented to accept the act of 1882. Your oratrix had at that time selected land for herself as the head of a family and also selected lands for her children. And your oratrix set forth the lands thus selected in her original bill of complaint; that since the filing of said original bill of complaint John K. Rankin, allotting agent, has allotted certain of the lands selected by your oratrix and has set aside for your oratrix and her children certain other lands and your oratrix has relinquished her claim to the land allotted by the said John K. Rankin and has accepted the land set aside by said allotting agent for her and her children.

Your oratrix has therefore selected for herself as the head of a family 160 acres, to-wit: the N. E. ¼ of section 16, township 25 north, range 7 east. And your oratrix has selected lands for her minor children as follows: For Rule Kuhn the E. ½ of the N. W. ¼ of section 16, township 25 north, range 7 east. For John Kuhn the S. ½ of the S. W. ¼ of section 10, township 25 north, range 7 east. For Barbara Kuhn, the W. ½ of the N. W. ¼ of section 15, township 25 north, range 7 east. For Josephine Kuhn the N. ½ of the S. W. ¼ of section 10, township 25 north, range 7 east. For George
1245 Kuhn the W. ½ of the N. W. ¼ of section 16, township 25 north, range 7 east. For Margaret Kuhn the S. ½ of the S. E. ¼ of section 9 township 25 north, range 7 east. For Mary Ann Kuhn the S. E. ¼ of the N. E. ¼ & the N. E. ¼ of the S. E. ¼ of section 9, township 25 north, range 7 east. All of said land being upon the Omaha reservation in the State of Nebraska.

Your oratrix further states she is a member of the tribe of Indians by blood and descent and in accordance with the laws and customs of the said Omaha tribe of Indians. That although the allotting agent, John K. Rankin, has set aside the above described lands for your oratrix and her children an allotment thereto has been refused by the Department of the Interior.

And your oratrix further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly
1246 certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th volume of the Statutes at Large on page 305, which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your oratrix begs to refer.

Your oratrix further states that the defendant, The United States of America, claims that by virtue of the 4th art. of the treaty of March 6th, 1865, it was provided that the assignment to be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood, "including their half breed and mixed blood relatives

now residing with them;" and the defendant claims that your oratrix and her ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your oratrix admits that she and her ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation nor the rights of allotment under the treaty of March 6th, 1865, nor the rights of allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and
1247 the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs January 21st, 1871, and approved by the Secretary of the Interior January 26, 1871, contained names of numerous half and mixed bloods relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of the making the schedule referred to; that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, nor at the time of the approval of the schedule by the chiefs the agent, the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation but who at all times and at the time of the treaty of March 6th, 1865, and ever since resided away from the reservation.

Your oratrix further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art., of said treaty had been already provided for by the treaty of March 6th, 1854, and which right of selection an- assignment was granted to all members of the tribe alike.

Your oratrix further states that the defendant, The United States, claims that the complainant or her ancestor has received allotments of lands under and by virtue of the treaty of July 15th 1830, and 10th art., thereof and by the acceptance of said allotment under
1248 the policy of the Indian Office neither the complainant nor her ancestor are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians. Your oratrix admits that her ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830, as a half breed of the Omaha tribe of Indians, that the quantity so assigned was one half of the amount provided by said treaty, and that

the said allotment was not accepted by her nor given to her in consideration of the relinquishment of any rights other than those to which she was entitled on the Nemaha reservation.

That numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th, 1830, sums of money which *was* accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th, 1882; that your oratrix has not in any manner assigned or relinquished her right or claim to the benefit under the various laws and treaties granted to the Omaha tribe of Indians, neither has the United States by the executive department of the Government nor by the enactment of any law authorized this complainant or her ancestor or any
1249 member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of her tribe has been accepted or approved by the United States or any of its officers.

Wherefore your oratrix shows to your honors that she is without a remedy at law and remediless in the premises unless relieved by your honors in this court of equity, and she therefore prays the aid of the court in the premises, and that said defendant, The United States of America, may answer your oratrix' bill without oath, answer under oath being expressly waived.

That the land set apart by the allotting agent, John K. Rankin, for your oratrix and her children and duly selected by your oratrix for herself and her children be ordered and decreed to be the allotments of your oratrix and her children respectively, and that they each and all of them be entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

And so may it please your honors to grant unto your oratrix the most gracious writ of subpœna to be issued under the seal of this court directed to The United States of America therein and thereby commanding it on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand and abide and perform such order and decree therein as to the court shall seem meet, and for such other and further relief as may be just and equitable.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed Apr. 30, 1901, Geo. H. Thummel, clerk.

1250 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, deposition behalf plaintiff was filed in said case, which deposition is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

CELESTINE B. KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Docket "T," No. 505. Depositions.

Testimony taken in behalf of the complainant, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at Pender, in the State of Nebraska, on this the 22nd day of August, 1902, the complainant being represented by Thomas L. Sloan, Esq., and the defendant being represented by John L. Webster, Esq.

E. A. WILTSE, a witness produced in behalf of the complainant, being first duly sworn, deposes and says as follows:

Direct examination by Mr. T. L. SLOAN:

Q. State your name?
A. E. A. Wiltse.
Q. Are you one of the school directors of this school district?
A. Not at the present time.
Q. Have you been in times past?
A. I have been for the past six years.

1251 Q. Was it a part of your duties to make the collection of funds allowed by the United States on contract for the education of Indian children for this district?
A. It was.
Q. Did you during the years that you were collecting such moneys collect for the attendance of the Kuhn children?
A. We have for several years, part of the time we failed, for the reasons of negligence on our own part.
Q. Did you collect such moneys for the education of the Mitchell Monette children?
A. I am confident that we did a part of the time. I do not think that they have attended all of the time. We have collected rent or tuition from them I am sure.
Q. Did you so collect for the children of Hiram Chase?
A. We have.
Q. And for the Hanicka children?
A. If my memory is correct we have at different times.
Q. In regard to these payments were they all paid under the same contract in the same manner?
A. They were.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Do you know anything about this of your own personal knowledge or are you speaking from the general impression as to what was done?

A. We made a contract with the Government each year in the fall of the year. This contract, after being approved by them, the teacher in each of the departments makes out a list of the
1252 names of the children that attend school for which we may draw the tuition. That list we sent to the department claiming tuition under the contract which has been made.

Q. With whom did you make this contract?

A. We make it with the Indian commissioner.

Q. Is it in writing?

A. Yes sir.

Q. Well, then whatever you did will appear from the records in the Indian Department.

A. I should suppose so.

Q. The contract would appear there, and the direction for the payment would appear there?

A. Yes sir.

Q. Have you any copy of any of those contracts?

A. The present secretary of the school board would have them, or should have.

Q. They are not in your possession?

A. Not at the present time.

Q. Would your school board make a report of the names of the children that were attending the school which were charged for under these Government contracts?

A. They would.

Q. And for the time for which they attended school?

A. Yes sir.

Q. You have not copies of any of those reports in your possession?

A. I have not, for I am not secretary. They are kept in the records of the director, when I was director, I turned them over when I ended my term of office.

1253 Q. Who would have the possession of the copies of the reports at this time?

A. Mr. J. M. Curry is director at the present time. I think he has all the records.

Witness excused.

By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witness, E. A. Wiltse was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of the witness, and by me typewritten, and that his signature to said deposition was waived. That said deposition was taken pursuant to the agreement of parties at Pender Nebraska, on the 22nd day of August, 1902. That both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Notary Public.

My fees:

Swearing 1 witness	.10
8 folios, at 20c	1.60
	1.70

Pd. by counsel for pl'ffs,
WM. S. HELLER.

Endorsed: Filed Sep. 3, 1902. Geo. H. Thummel, clerk.

1254 Thereupon afterwards, to-wit.—on the 21st day of September, 1901, answer was filed in said case, which said answer is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CELESTINE B. KUHN, Plaintiff,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Doc. "T," No. 505. Answer to Amended Bill of Complaint.

The Answer of The United States of America, Defendant, to the Amended Bill of Complaint of Celestine B. Kuhn, Plaintiff.

This defendant now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for its answer thereto, and unto so much and parts thereof as this defendant is advised is or are material or necessary for it to make answer unto this defendant for answer says:

1. This defendant denies that the complainant is an Omaha Indian and denies that the complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary, this defendant avers that the said complainant is a white woman, and a citizen of the United States, and that her ancestors were white persons

and citizens of the United States, and that her said ancestors were not Indians and were not members of the Omaha tribe of Indians; and this defendant denies that complainant or her ancestors ever maintained or sustained tribal relations with the Omaha tribe
1255 of Indians of Nebraska, and denies that they ever participated in the benefits and other rights of the said tribe, and denies that they were recognized by the said tribe or by the United States as members of the Omaha tribe of Indians.

This defendant for further answer avers that the complainant claims to trace her lineage back to Michael Barada, who had intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality, and a citizen of the United States, and his wife was an Indian woman, but this defendant is not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to her proof in that regard.

That there was born to the said Michael Barada and his wife in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen, of the United States, and that said Antoine and his wife Josephine Vien, continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two
1256 years, until some time after the approval of the act of Congress of August 7, 1882 (22 U. S. Stats. at Large, 341) hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Celestine (the complainant herein) who intermarried with John Kuhn; and the said Celestine B. Kuhn was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and never was on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Celestine B. Kuhn so being a white woman and a citizen of the United States taking the status of her father, continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after

the approval of the act of Congress of August 7, 1882, when she came to the Omaha reservation with her parents, with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

2. This defendant for further answer avers that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865 (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded complain-
1257 ant, being only one-sixteenth Indian blood, and she not then living with the Omaha tribe of Indians; that the provisions of section 5 of the act of Congress approved August 7, 1882 (22 U. S. Statutes at Large, 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and this defendant further avers that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians and by the Indian agent of the Omaha tribe of Indians, and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or *hïs* ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of *his* ancestors were
1258 entitled to allotments or selections of lands on the Omaha Indian reservation.

3. This defendant further answering says: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, they

made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States Indian agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedants or descendants of said parties, so far as I know their names" and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant.

1259 4. This defendant further answering says: That after the act of Congress of August 7, 1882 (22 U. S. Statutes at Large, p. 341), the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotments of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding the cases of the absentee mixed bloods, the following is quoted from a letter

addressed to the special agent on September 13, 1883, in the case of Celestine Kuhn (the complainant) a sister of Mrs. Peters and
1260 a member of the Barada family.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas relates to the treaty of March 6, 1865 (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date of December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celeste Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

1261 If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not — all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians.

Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the sister of complainant and the action of the department thereon.

1262 The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case. The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

1263 Since my arrival, a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voices of the council and the people were unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by

letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born upon the duly certified census roll of 1871, of their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. This defendant further avers that notwithstanding the rulings of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father, Michael Barada, to-wit:—William Barada, Mary Sailors, Frank Peters,
1264 Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation.

He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8 and broke 40 acres.

We told him to stop and go away. He laughed at us and
1265 said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years and the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on prairie and farm there; but these intruders are keeping us off of good land.

1266 We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted land on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the
1267 Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865 (14 Statutes 668) was made. (The — article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians,
1268 you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

5584--Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. This defendant further avers that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to

remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such facts to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters William Barada, Luke Sailors and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs, repeated his recommendation of Octo-
1269 ber 2nd, for military aid to eject said intruders and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter Peters, Luke Sailors and Frank Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as she was of that class.

This defendant further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are — entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. This defendant further avers that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made de-
1270 fendants and in which suits, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants

therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. *These* defendants for further answer avers that under article 10, of the treaty of July 15, 1830 (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5 (4) of an act of Congress approved July 31, 1854 (10 U. S. Statutes at Large, 332) a patent was issued to complainant's ancestor for three hundred and twenty acres of land on the so called Nemaha reservation and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of the ancestor and his descendants, including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians and to any further or other allotment of land.

10. This defendant further avers that the preference right to select lands for allotment under the act of Congress, August 7, 1882 (22 U. S. Statutes at Large, 342) is confined by section 5 of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the
1271 treaty with the Omahas concluding March 6, 1865, and Barada and Kuhn families had not received and were not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof, the said Barada and Kuhn families did not have and could not acquire any such interest in the lands described in the amended petition as would give them a preference over other Indians in the selection of land for allotment.

11. And this defendant for further answer says that the complainant was not and is not the head of a family, and is not entitled to claim by way of allotment, the 160 acres of land described in the amended bill of complaint, but her right to allotment, if any she had, would be limited under the law to 80 acres of land.

12. This defendant for further answer avers that the complainant did not select for allotment, and did not occupy or make any improvements on any of the lands described in the amended bill of complaint; and the defendant further avers that the complainant never lived upon the Omaha reservation until after the act of 1893, and never selected, improved, or cultivated any land whatsoever, upon the Omaha Indian reservation, and is not entitled to have or select any lands upon the Omaha Indian reservation for allotment.

13. This defendant for further answer admits that the United States allotting agent did reserve for the complainant and other members of the Kuhn family, pending the result of this litigation, a quantity of land in section- 9, 10, 15 and 16, township 25, range 7 east, and which reservation includes all the land described in the amended bill of complaint, except the following which are
1272 not included within said reservation, to-wit: The S. E. ¼ of the S. W. ¼ of section 10; the N. ½ of the S. W. ¼ of section 10; the S. E. ¼ of the N. E. ¼ of section 9, township 25, range 7 and all which last above described lands are included within the lands reserved by the United States allotting agent for the members of the

Monette family, and which said reservation for the Monette family including the lands above so described *are* so entered upon the records in the office of the Commissioner of Indian Affairs.

But that the reservation of lands for the Kuhn family was not and is not intended or to be construed as a recognition of right of the complainant to have or select any part of said lands for allotment to the complainant, or in behalf of herself or her said children.

14. This defendant for further answer avers that John Kuhn, the husband of the complainant, is a free born full blooded white man and citizen of the United States, and that said marriage took place in Richardson county, State of Nebraska, in the year 1873, and that the said John Kuhn was not and never became a member of the Omaha tribe of Indians, and that the children of the complainant took the status of their father and were and are white persons, and citizens of the United States, and *was* not and never have been members of the Omaha tribe of Indians, and are not entitled to a selection of lands either in their own right or by the complainant in their behalf.

15. And this defendant says that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of this defendant, and this de-

1273 fendant denies that the complainant is entitled to the relief or any part thereof in the said complaint demanded.

W. S. SUMMERS,
U. S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Sep. 21, 1901, Geo. H. Thummel, clerk.

1274 Thereupon afterwards, to-wit:—on the 22nd day of September, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

CELESTINE B. KUHN
vs.
UNITED STATES OF AMERICA. } No. 505, Doc. "T."

The Replication of Celestine B. Kuhn, Plaintiff, to the Answer of United States of America, Defendant.

This replicant, saving and reserving to herself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer, of the defendant, for replication thereunto, saith that she doth and will aver, maintain and prove her said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitor- for Complainant.

Endorsed: Filed Sep. 22, 1902, Geo. H. Thummel, clerk.

1275 Thereupon afterwards to-wit: at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal No. 1 of said court to-wit:

CELESTINE B. KUHN, Plaintiff,
vs.
THE UNITED STATES OF AMERICA, Defendant. } Doc. "T," No. 505. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendant and against the complainant. It is therefore

Ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8, 1902, Geo. H. Thummel, clerk.

1276 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, assignment- of errors, were filed in said case which said assignment- of errors are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

CELESTINE B. KUHN, Complainant, *vs.* THE UNITED STATES OF AMERICA, Defendant. } Docket "T," No. 505. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in finding and determining that Celestine B. Kuhn received an allotment of land in the Nemaha reservation and was for that reason debarred from claiming a further allotment upon the Omaha reservation.

Second. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, made July 15, 1830, as meaning and intending that the taking of an allotment of land by a member of such tribe pursuant to article 10 of said treaty thereby extinguished the claim of such Indian to a further allotment of land or further allotments or benefits in the tribal property as a member of such tribe.

Third. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, of July 15, 1830, as meaning and intending that half-breed members of the tribe
1277 who secured allotments of land in severalty in the Nemaha reservation under the terms of said treaty are not entitled to a second allotment under the act of 1882, although at the time of its passage they were residing on the reservation in the tribal relation.

Fourth. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Fifth. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not

on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Sixth. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Seventh. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Eighth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

1278 Ninth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Tenth. The court erred in holding and determining that Celestine B. Kuhn and her children were not entitled to claim and have allotted to them the land described in plaintiff's bill of complaint, to-wit: the north half of section sixteen (16); the east half of the north east quarter of section seventeen (17); the southwest quarter of section twenty-four (24) the south half of the northwest quarter of section twenty-four (24); and the south half of the south west quarter of section nine (9) all in township twenty-five (25) north, of range seven (7) east of the 6th P. M.

Eleventh. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Twelfth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

CELESTINE B. KUHN,
Complainant,
By THOMAS L. SLOAN &
CHAS. E. CLAPP,
Her Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1279 Thereupon, to-wit:—on the 13th day of October, 1903, petition for appeal was filed in said case, which said petition is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

CELESTINE B. KUHN, Complainant, vs. THE UNITED STATES OF AMERICA, Defendant. } Docket "T," No. 505. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives herself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal
1280 in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

CELESTINE B. KUHN,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

Thereupon, to-wit:—on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following, to-wit:—

1281 505, T.

Know all men by these presents, that we, Celestine B. Kuhn and Thomas L. Sloan & Jno. A. Wachter are held and firmly bound unto The United States of America, in the full and just sum of one hundred dollars to be paid to the said The United States of America heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Celestine B. Kuhn plaintiff and The United States of America defendant decree was rendered against the said Celestine B. Kuhn and the said Celestine B. Kuhn has obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Celestine B. Kuhn shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

CELESTINE B. KUHN. [SEAL.]
JNO. A. WACHTER. [SEAL.]
THOMAS L. SLOAN. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1282 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1283 The United States of America to The United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant

to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Celestine B. Kuhn is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #1997 No. 505 United States circuit court, district of Nebraska. Celestine B. Kuhn *vs.* United States Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

1283*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, by handing to and leaving a true and correct copy thereof with John L. Webster personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1283*b* UNITED STATES OF AMERICA, *District of Nebraska, County of Douglas,* } ss:

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

SUSAN M. BONNEVIER,
Notary Public.

1284 Thereupon afterwards, to-wit: on the 30th day of April, 1901, an amended bill of complaint was filed in said case, which said amended bill is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

STELLA KUHN, Complainant, *vs.* THE UNITED STATES OF AMERICA, Defendant.	No. 506, Doc. T. Amended Bill of Complaint.

To the honorable the judges of the said court:

Stella Kuhn brings this, her bill of complaint, against the United States of America, and thereupon your oratrix complains and states that she is a member of what is, or until recently was known as the Omaha tribe of Indians in Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and in the treaties herein set forth. That she is of what is known as mixed blood and is a lineal descendant from one Michael Barada who intermarried with one Taegleha Haceinda, an Indian woman of the said tribe.

That your oratrix and her ancestor back to said Michael Barada and his said wife have conitnually maintained their domicile with the said tribe and maintained tribal relation- therewith so long and so far as any tribal relations have been maintained by the said tribe, and has participated in the property and other rights of the said tribe and been recognized by the said tribe and the members thereof as *a* member of the said tribe and entitled to all its rights and privileges.

And further complaining your oratrix says that on the 16th day of March A. D. 1854, a certain treaty was entered into by and
1285 between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof they received their present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including the ancestor of your oratrix.

All of which matters and other things more fully appear in said treaty as published in United States Statutes at Large vol. 10, page 1043, to which for greater certainty your oratrix refers.

Your oratrix further says that on the 6th day of March A. D. 1865, another treaty was entered into between said parties wherein

was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14, page 667, to which for greater certainty your oratrix begs to refer.

And further showing your oratrix says that on the 7th day of August A. D. 1882, an act was approved — that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe. To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, to each other person under eighteen years of age one sixteenth of a section. That all allotments should be *selected by the Indians*, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large, vol. 22, 1286 page 341, to which for greater certainty your oratrix refers.

Your oratrix further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act in December, 1884, and at subsequent times since.

Your oratrix further shows that on the 3rd day of March A. D. 1893 an act of Congress was passed amedning or extending the act of August 7th, 1882, providing that with the consent of the Omaha tribe of Indians, expressed in open council, further allotments should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March, 1893, but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council, May 1899, and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instruction to the said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the land claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimant.

And your oratrix further shows that she is a daughter of Celestine B. Kuhn who is a daughter of Antoine Barada, who was the son of Michael Barada and Taegleha Hacieneda, who was as herein before set forth an Indian woman and a member of said tribe. That ever since the year 1882 your oratrix has continuously resided upon the Omaha reservation. That your oratrix first selected land in the

year 1882 and was upon the reservation at the time the Omahas consented to accept the act of 1882.

1287 And your oratrix in her original bill of complaint sets forth the lands thus selected; that since the filing of said original bill of complaint John K. Rankin, allotting agent, has allotted the lands selected by your oratrix and has set aside for your oratrix certain other lands and your oratrix has relinquished her claim to the land allotted by said John K. Rankin and has accepted the land set aside by said allotting agent for her.

Your oratrix has therefore selected for herself the east ½ of the N. W. ¼ of section 15, township 25 north, range 7 east, said land being upon the Omaha reservation in the State of Nebraska.

Your oratrix further states she is a member of the tribe of Indians by blood and descent and in accordance with the laws and customs of the said Omaha tribe of Indians. That although the allotting agent, John K. Rankin, has set aside the above described lands for your oratrix an allotment thereto has been refused by the Department of the Interior.

And your oratrix further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdictions involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when prop-

1288 erly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th volume of the Statutes at Large on page 305, which act has been amended by reënactment duly approved by the President of the United States, February 6th, 1901 to which for greater certainty your oratrix begs to refer.

Your oratrix further states that the defendant, The United States of America, claims that by virtue of the 4th art. of the treaty of March 6th, 1865, it was provided that the assignment to be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood "including their half breed and mixed blood relatives now residing with them;" and the defendant claims that your oratrix and her ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the

treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your oratrix admits that she and her ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation nor of the rights of allotment under the treaty of March 6th 1865, nor the rights of allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, contained names of numerous half and mixed blood relatives of the Omaha tribe who were
1289 not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of the making the schedule referred to; that under the provisions of the act of August 7th, 1882, many half breed and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, nor at the time of the approval of the schedule by the chiefs, the agent, — the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation but who at all times and at the time of the treaty of March 6th, 1865, and ever since resided away from the reservation.

Your oratrix further states that the defendant, The United States, claims that the complainant or her ancestor has received allotments of lands under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof, and by the acceptance of said allotment under the policy of the Indian office neither the complainant nor her ancestor are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians. Your oratrix admits that her ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830, as a half breed of the Omaha tribe of Indians, that the quantity so assigned was one half of the amount provided by said treaty, and that the said allotment was not accepted by her nor given to her in consideration of the relinquishment of any rights other than those to which she was entitled on the Nemaha reservation.

The numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the
1290 10th art. of the treaty of July 30th, 1830, sums of money which was accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in

the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th 1882; that your oratrix has not in any manner assigned or relinquished her right or claim to the benefit under the various laws and treaties granted to the Omaha tribe of Indians, neither has the United States by the executive department of the Government nor by the enactment of any law authorized this complainant or her ancestor or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of her tribe has been accepted or approved by the United States or any of its officers.

Wherefore your oratrix shows to your honors that she is without a remedy at law and remediless in the premises unless relieved by your honors in this court of equity, and she therefore prays the aid of the court in the premises, and that said defendant, The United States of America, may answer your oratrix' bill without oath, answer under oath being expressly waived.

That the land set apart by the allotting agent, John K. Rankin, for your oratrix and duly selected by her be ordered and decreed to be the allotment of your oratrix, and that she be entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

1291 And so may it please your honors to grant unto your oratrix the most gracious writ of subpœna to be issued under the seal of this court direct- to the United States of America therein and thereby commanding it on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand and abide and perform such order and decree therein as to the court shall seem meet, and for such other and further relief as may be just and equitable.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed Apr. 30 1901 Geo. H. Thummel, clerk.

1292 Thereupon afterwards, to-wit: on the 21st day of September, 1902, an answer was filed in said case, which said answer is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

STELLA KUHN, Complainant, *vs.* THE UNITED STATES OF AMERICA, Defendant.	Doc. T, No. 506. Answer to Amended Bill of Complaint.

The Answer of The United States of America, Defendant, to the Amended Bill of Complaint of Stella Kuhn, Complainant.

This defendant now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for answer thereto, and unto so much and — parts thereof as this defendant is advised is or are material or necessary for it to make answer unto this defendant for answer, says:

1. This defendant denies that the complainant is an Omaha Indian and denies that complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary, this defendant avers that the said complainant is a white woman, and a citizen of the United States, and that her ancestors were white persons and citizens of the United States, and that her said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and this defendant denies that complainant or her ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and denies that they ever participated in the benefits and other rights of the said tribe; and denies that they were recognized by the said tribe or by the
1293 United States, as members of the Omaha tribe of Indians.

This defendant for further answer avers that the complainant claims to trace her lineage back to Michael Barada who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but this defendant is not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to her proof in that regard.

That there was born to the said Michael Barada and his wife in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a free born white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1883, and was

there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha tribe.

That the said Antoine Barada intermarried with one Josephine Vieu, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vieu continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years until some time after the approval of the act of Congress of August 7, 1882 (22 U. S. Stats. at Large, 341), hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Celestine (the mother of this
1294 complainant) and the said Celestine was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Celestine Barada, so being a white woman and a citizen of the United States, married a full blood white man named John Kuhn, and a citizen of the United States. There was born to the said John Kuhn and his wife Celestine, a daughter named Stella Kuhn, who is the complainant herein, and the said Stella Kuhn being such white person and citizen of the United States taking the status of her father continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when she came to the Omaha reservation with her parents with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

2. This defendant for further answer avers that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress of 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded complainant, being only one sixteenth Indian blood, and *he* not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882. (22 U. S. Statutes at Large p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby
1295 limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the

tribe at the date of the treaty of 1865, and this defendant further avers that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians, and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or her ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. This defendant further answering says: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontenelle and others being
1296 members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should to to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Ma-garet Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or descendants of said parties, so far as I know their names." and which said report is a matter of record in this court, and binding upon the parties thereto, including these complainants. That the said Antoine Barada was the grandfather of this complainant, and the said

Celestine B. Kuhn and John Kuhn were the parents of this complainant, and Edward Kuhn and Ethel Kuhn Rutledge are brother and sister of this complainant.

4. This defendant further answering, says: That after the act of Congress of August 7, 1882 (22 U. S. Statutes at Large, p. 341) the said Peters family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came
1297 from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher as United States allotting agent caused the claim of the Peters family to be investigated, and being of opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. "The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celeste Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the
1298 Omahas relates to the treatyof March —, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were

entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date — December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and
1299 receive an allotment. Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs Euphrasia Peters, and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case. The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at
1300 the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people were unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but mem-
1301 bers of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born upon the duly certified census roll of 1871, of their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. This defendant further avers that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit, William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about the intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case
1302 was sent to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our un-lotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are
1303 poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha
1304 reservation; that he was not residing with the Omahas when the treaty of March 6, 1865 (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half — mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882, (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood rela-

tions residing with them at the date of the treaty of 1865, whose names are born upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

1305 Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. This defendant further avers that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such facts to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors, and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders, and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Walter

1306 Peters, Luke Sailors and Frank Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as she was of that class.

This defendant further avers that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

9. This defendant further avers that Ma-garet Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which suits said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken, and subsequently in the spring of 1893, the said circuit court of the
1307 United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. This defendant for further answer avers that under article 10, of the treaty of July 15, 1830, (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to complainant's ancestor for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of the ancestor and his descendants including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians and to any further or other allotment of land.

10. This defendant further avers that the preference right to select lands for allotment under the act of Congress, August 7, 1882, (22 U. S. Statutes at Large, 342) is confined by section 5, of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the treaty with the Omahas concluding March 6, 1865, and Barada and Kuhn

families had not received and were not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof, the said Barada and Kuhn families did not have and could not acquire any such interest in the lands described in the amended petition as would give them a preference over other Indians in the selection of land for allotment.

11. This defendant for further answer avers that the complainant did not select for allotment, and did not occupy or make any improvements on any of the lands described in the amended
1308 bill of complaint; and the defendant further avers that the complainant never lived upon the Omaha reservation until after the act of 1882, and never selected, improved, or cultivated any land whatsoever, upon the Omaha Indian reservation, and is not entitled to have or select any lands upon the Omaha Indian reservation for allotment.

12. This defendant for further answer admits that the United States allotting agent did reserve for the Kuhn family including this complainant, certain lands including the E. ½ of the N. W. ¼ of section 15, township 25, range 7, pending the result of this litigation, but that the reservation of lands for the Kuhn family was not and is not intended or to be construed as a recognition of the right of the complainant to have or select any part of said lands for allotment.

13. This defendant for further answer avers that the United States allotting agent in the course of his official duty and upon investigation did find that the complainant was not entitled to an allotment of lands on the Omaha Indian reservation, and made an official report of his said finding to the Commissioner of Indian Affairs, and which said report and finding, that the complainant was not entitled to an allotment of lands on the Omaha Indian reservation was approved by the Commissioner of Indian Affairs, and the Secretary of the Interior, and which said finding and judgment remains in full force and effect.

14. And this defendant says that if there is any other matter, cause or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or be*half* of this defendant, and this defendant denies that the complainant is en-
1309 titled to the relief or any part thereof in the said complaint demanded.

W. S. SUMMERS,
U. S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Sep 21 1901 Geo. H. Thummel, clerk.

1310 Thereupon afterwards, to-wit: on the 22nd day of September, 1902, a replication was filed in said case, which said replication is in the words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

STELLA KUHN
v.
UNITED STATES OF AMERICA. } No. 506, Doc. T.

The Replication of Stella Kuhn, Plaintiff, to the Answer of United States of America, Defendant.

This replicant, saving and reserving to herself, all, and all manner of advantages of exception which may be had and taken to the manifold uncertainties and insufficiencies of the answer of the defendant, for replication thereunto, saith that she doth and will aver, maintain and prove her said bill to be true, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22, 1902. Geo. H. Thummel, clerk.

1311 Thereupon afterwards, to-wit: at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal "1" of said court, to-wit:

STELLA KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant. } Doc. T, No. 506. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the re-

spective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendant and against the complainant.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant, taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902. Geo. H. Thummel, clerk.

1312 Thereupon afterwards, to-wit:—on the 13th day of October, 1903, assignment of errors, were filed in said case, which said assignments of errors are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

STELLA KUHN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.

Docket "T," No. 506. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

1313 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon

afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Stella Kuhn was not entitled to claim and have allotted to her the land described in plaintiff's bill of complaint, to-wit: The west half of the northwest quarter of section fifteen (15) in township twenty-five (25) north of range seven (7) east of the 6th P. M.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendant and against the complainant.

1314 Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

STELLA KUHN,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1315 Thereupon, to-wit:—on the 13th day of October 1903 petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

STELLA KUHN, Complainant, *vs.* THE UNITED STATES OF AMERICA, Defendant.	Docket "T," No. 506. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives herself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an ap-
1316 peal in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

STELLA KUHN,
Her *Complainant*,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903. Geo. H. Thummel, clerk.

Thereupon, to-wit:—on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following, to-wit:—

1317 506, T.

Know all men by these presents, that we, Stella Kuhn and Jno. A. Wachter, are held and firmly bound unto The United States of America, in the full and just sum of one hundred dollars to be paid to the said The United States of America heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Stella Kuhn, plaintiff and The United States of America, defendant judgment was rendered against the said Stella Kuhn and the said Stella Kuhn has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America citing and admonishing it to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Stella Kuhn shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

STELLA KUHN. [SEAL.]
JNO. A. WACHTER. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903, Geo. H. Thummel, clerk.

1318 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto the following of which is the original:

1319 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Stella Kuhn is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #1996. No. 506 United States circuit court, district of Nebraska. Stella Kuhn *vs.* United States. Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

1319*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, by handing to and leaving a true and correct copy thereof with John L. Webster personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1319*b* UNITED STATES OF AMERICA, *District of Nebraska, County of Douglas,* } ss:

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

1320 Thereupon afterwards, to-wit:—on the 19th day of April 1901, amended bill of complaint was filed in said case, which said amended bill of complaint is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

PHILEMON H. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Frank Robinson, a Minor, and Charles P. Mathewson, Defendants.

No. 507, Doc. T. Amended Bill of Complaint.

To the honorable the judges of said court:

Philemon H. Frost brings this his bill of complaint against the defendants, and says that he is a member of what is or until recently was known as the Omaha tribe of Indians in Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and the treaties herein set forth.

That he is of what is known as mixed blood, and is a lineal descendant from one Michael Barada or Michael Berda as he was some times designated, who intermarried with one Taegleha Hacienda, an Indian woman of the full blood and a member of said tribe. That your orator and his ancestors back to said Michael Barada and his said wife have continually maintained their domicile with said tribe, and have maintained tribal relations therewith so long and so far as any tribal relations have been maintained by said tribe, and have participated in the property and other rights of said tribe, and have been recognized by the said tribe and the members thereof as members of said tribe and are entitled to all its rights and privileges.

1321 Further complaining your orator says that on the 16th day of March, A. D. 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof it received its present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including the ancestors of your orator. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large vol. 10, page 1043, to which for greater certainty your orator refers.

And your orato further shows that on the 6th day of March, A. D. 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14, page 667, to which for greater certainty your orator begs to refer.

And further showing your orator says that on the 7th day of August, A. D. 1882 an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person
1322 under eighteen years of age one sixteenth of a section. That all allotments should be *selected by the Indians*, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22, page 341, to which for greater certainty your orator refers.

Your orator further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act in December 1884 and at subsequent times since.

Your orator further states that he is a member of the Omaha tribe by blood and descent, by recognition as such by both the tribal and governmental authorities, and according to the customs, rules and regulations of the Omaha tribe of Indians. That such relationship and membership has never been terminated. That his mother, Artemesia Frost was recognized as a member of the Omaha tribe of Indians and that she received an allotment on the Nemaha half breed tract, and that she has lived on the present reservation and does live upon said reservation at the present time. That his said mother since the treaty of 1865 has been recognized as a member of the Omaha tribe of Indians and has been enrolled upon the tribal roll and has drawn annuity money for herself and some of her children, and has had the benefits of tribal property, the mill and other common property of the tribe. That Artemesia Frost was the daughter of Margaret Sloan, who was also recognized as a member of the tribe and received the benefits of the tribal property under the treaty of 1854, and the later treaty of March 6th, 1865. That your orator received a payment of annuity in 1875 and was on the rolls at that time.

That your orator has selected the following described land for allotment of which he is now in possession. The S. ½ of
1323 N. E. ¼ of section 34, township 25 north, range 8 east of the 6th P. M. in Nebraska; that such described property is a part of the land described and referred to in the treaties and acts of Congress herein above set out and has been surveyed in accordance with the treaties and acts of Congress; that your orator has placed valuable improvements upon the above described premises, that no person or persons claim or did claim the same when first selected by your orator in accordance with the laws relating thereto and the notice

received from the council of the Omaha tribe of Indians, and that it is occupied by your orator and he is the only person who has occupied said land under a claim for allotment. That application for the allotment of said land has been refused your orator by the Department of the Interior.

Your orator further says that on the 3rd day of March, A. D. 1893 an act of Congress was passed amending or extending the act of August 7th, 1882, providing that with the consent of the Omaha tribe of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893, but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council May 1899, and immediately thereafter assignments for allotments were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land in controversy
1324 without investigation as to the priority of claim and without notice to the claimants.

To Frank Robinson, a minor, whose next friend is Charles Robinson, the S. ½ of the N. E. ¼ of section 34, township 25 north, range 8, east on the State of Nebraska.

That a trust patent therefor naming the United States as trustee of date April 11th, 1900, has been issued to Frank Robinson. No rights were acquired by said trust patent but owing to the fact the assignment was made during the pendency of this suit makes Fred Robinson a necessary party defendant.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land and to place in possession the allot-ee or lessee, and that he threatens to place into possession either the allot-ee hereinbefore named or his lessee to the great and irreparable damage of the complainants who are now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land in controversy and his threats that he will remove your orator from the land makes him a necessary party to this suit.

And your orator further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claims to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper

circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance
1325 of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305 which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator begs to refer.

Your orator further states that the defendant The United States of America claims that by virtue of the 4th art. of the treaty of March 6th, 1865, the assignment to be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood, "including their half breed and mixed blood relatives now residing with them." The said defendant claims that your orator and his ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your orator admits that he and his ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation and the rights of allotment under the treaty of March 6th, 1865, or their rights of allotment under the act of Congress of August 7th, 1882. That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said
1326 treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agents on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871, contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865 nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent, — the superintendent, nor at the time of the approval of the Secre-

tary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman who never resided on the reservation, but at all times and at the time of the treaty of March 6th, 1865, and ever since has resided away from the reservation.

Your orator further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your orator further states that the defendant, The United States, claims that the complainant or his ancestors have received
1327 allotment of land under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotment under the policy of the Indian office your orator is not entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your orator admits that his ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians, that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by his ancestor nor given to his ancestor in consideration of the relinquishment of any other right than those to which she was entitled on the Nemaha reservation.

Numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th, 1830, sums of money, which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiencies in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66 of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March 1865, and the subsequent act of Congress of August 7th, 1882; that your orator has not in any manner assigned or relinquished his right or claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians neither has the United States by the executive department of the Government nor by the enactment of any law authorized
1328 this complainant or his ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant nor any member of this tribe has been accepted or approved by the United States or any of its officers.

Wherefore your orator shows to your honors that he is without a remedy at law and remediless in the premises unless relieved by

your honors in this court of equity and he therefore prays the aid of the court in the premises and that said defendants, The United States of America, Frank Robinson, a minor, by his next friend, Charles Robinson and Charles P. Mathewson may answer your orator's bill but without oath, answer under oath being expressly waived. That it be ordered and decreed that the patent issued to Frank Robinson is null and void and that the selection as made by your orator is his allotment and prior and superior to the claim of Frank Robinson and that your orator and his heirs be decreed entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orator further prays for a preliminary order of injunction against the defendants Charles P. Mathewson and Frank Robinson enjoining and restraining each of them, their agents and employees from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court directed to the United States of America, Frank Robinson, minor, by his next friend Charles Robinson and Charles P. Mathewson therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to
1329 be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed Apr. 19 1901 Geo. H. Thummel, clerk.

1330 Thereupon afterwards, to-wit.—on the 13th day of July, 1901, an answer was filed in said case, which said answer is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

PHILEMON H. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Frank Robinson, a Minor, and Charles P. Mathewson, Defendants.

Doc. T, No. 507. Answer to Amended Bill of Complaint.

The Answer of The United States of America, Frank Robinson, a Minor, and Charles P. Mathewson, Defendants, to the Amended Bill of Complaint of Philemon H. Frost, Complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto and unto so much and parts thereof as these defendants are advised is or — material or necessary for them to make answer unto these defendants for their joint and several answer say:

1. These defendants deny that the complainant is an Omaha Indian and deny that the complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary, these defendants aver that the said complainant is a white man, and a citizen of the United States, and that his ancestors were white persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that the complainant
1331 or his ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainant claims to trace his lineage back to Michael Barada, who intermarried with an Indian woman by the name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality, and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to her proof in that regard.

That there was born to the said Michael Barada and his wife in the year 1811, a daughter by the name of Margaret Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of her

father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of Omaha tribe of Indians; that the said Margaret Barada lived in the city of St. Louis with her parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Margaret Barada intermarried with one Thomas Sloan, a free born white man of Irish nationality and a citizen of the United States, and that said Thomas Sloan and his wife Margaret Sloan, continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years, until some time after the approval — act of Congress of
1332 August 7, 1882 (22 U. S. Stats. at Large, 341) hereinafter more particularly referred to.

That to the said Thomas Sloan and his wife Margaret there was born a daughter named Artemesia (the mother of this complainant) and the said Artemesia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and was never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Artemesia Sloan so being a white woman and a citizen of the United States, married a white man named Leonard Frost, a free born white man and a citizen of the United State. There was born to the said Leonard Frost and his wife Artemesia, a son who is the complainant herein, and the complainant being such white person and citizen of the United States, took the status of his father and continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, who came to the Omaha reservation about 1900 with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865 (14 U. S. — at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded complain-
1333 ant, being only one-sixteenth Indian blood, and he not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives

who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or his ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

1334 3. These defendants further answering say: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontanelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedants or descendants of said parties,

so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant. That the said Thomas Sloan was the grandfather of this complainant, and the said Artemesia Sloan was the mother of this complainant, and the Peters family and descendants of Michael Barada and uncles and aunts of complainant.

1335 4. These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Sloan family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Sloan family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Sloan family to be investigated, and being of the opinion as the result of said investigation that the Sloan family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Sloan family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to the Sloan and Peters families being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by the department in deciding the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant descended.

1336 "It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas relates to the treaty of March 6, 1865 (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to

members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having in no manner identified with the tribe since that time, living apart from them until a very recent period, when it
1337 appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, (a relative) of complainant and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his children were
1338 born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character, and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for the members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

The Omahas cannot afford to give these outsiders of their
1339 best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. Thse defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit: William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others persisted in remaining intruders upon the Omaha reservation against the protest of the members

of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation.

He belongs to one of the mixed blood families who were
1340 provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8 and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off. We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years and that the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the
1341 25 years, shall have their allotments on the tribal land.

These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Sloan family from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Ne-
1342 braska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted land on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865 (14 Statutes 668) was made. (The — article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among

them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

1343 In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. These defendants further aver that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and — failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such facts to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters William Barada, Luke Sailors and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

1344 On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested *that* the Hon. Secretary of War to cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter Peters, Luke

Sailors and Frank Peters, and such others as were intruders thereon under facts similar to that existing in the case of Frank Peters and which included complainant as he was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontanelle, Wa-gae-pa, otherwise known as Ezra Fremont, 1345 Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. This defendant further avers that afterwards the said Sloan family endeavored to have themselves adopted into the Omaha tribe of Indians, and to have themselves recognized by the Interior Department as members of the Omaha tribe of Indians, and to that end submitted to the department certain petitions purporting to be signed by certain members of the Omaha tribe of Indians; that under date of September 6, 1894, the department ruled that the said Margaret Sloan and Thomas L. Sloan should not be admitted to membership in the Omaha tribe of Indians, and accordingly so ordered, and in which order and opinion the department held as follows: "Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure separate and distince from their alleged rights as Omaha Indians by

blood, and that such alleged right is not necessarily a test for such adoption, there remains the right to admission by the free will
1346 and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seem to be in proper form, and to express the desire of a majority of the members of the tribe that the persons in question shall be placed upon the rolls of the tribe, and be admitted to all the rights and privileges of other members thereof.

Besides the opposing petition hereinbefore referred to, the department is in receipt of recent information which shows that of the one hundred and fifty-seven persons whose names appear on the six petitions presented with your letter, only seventy now favor the claimants; that eleven others have since assented to their adoption making eighty-one in all now favorable; that twenty-four of the signatures thereon were not written by the parties whose names are given, nor was the use of their names authorized by them, that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women—neither of whom have any voice in such matter-; that one of the nine members of the council purporting to have signed one of the petitions, did not sign nor authorize the use of his name, and further that there are about one hundred and eighteen male members of the tribe, of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petitions in question, the facts presented seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe that the Sloans be not admitted to membership and it is so ordered.

In reference to that part of your report wherein you state that Thomas L. Sloan has held and improved a tract of land since 1881 or 1882, on the Omaha reservation, it would seem that he is doing so in defiance of any legal authority of occupation."

1347 That after the above order and ruling of the department, the counsel for Margaret Sloan and Thomas L. Sloan applied to the department for reconsideration of the adoption case, and the department under date of November 17, 1896, re-affirmed this ruling and among other things therein said:

"It is not denied, nor has it ever been, that the Sloans, mother and son, are of part Omaha Indian blood. The tribe recognized them as such and made provisions for them, with others, by the treaty of 1830, and in the opinion of the department, and the Omahas themselves, their claim- as such mixed bloods were extinguished by the lands given them under the terms of the tenth article of the treaty named.

* * * * * * *

The claims of Margaret and her son William E. were extinguished prior to the birth of Thomas L. It is nowhere alleged or claimed that the latter is the offspring of a mother of Indian blood, much

more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claims of Margaret and Thomas L. are based upon their birth-right as Omaha Indians and upon their alleged adoption in recent years by the tribe.

The birthright claim of Margaret has been extinguished.

Thomas L. never had such a claim. Neither of them have any claim by adoption, never having been regularly, fairly or properly adopted by the tribe, as was shown by department letter of September 6, 1894.

Notwithstanding that Mr. Breckenridge has advised the department by letter dated the 30th ultimo, of his withdrawal as attorney for the claimants, I have caused this review of the case to be made, and adhere to the opinion expressed in department letter of
1348 September 6, 1894, that the persons named have no valid, legal claims to membership with the Omaha tribe of Indians."

And defendant avers that the above ruling of the Department of the Interior established the fact that Margaret Sloan and her descendants, the plaintiff herein, then were not and had not theretofore been members of the Omaha tribe of Indians, and the defendant- avers that the said Margaret Sloan and her descendants the plaintiff herein, are not and never have been members of the Omaha tribe of Indians.

10. These defendants for further answer avers that under article 10, of the treaty of July 15, 1830 (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854 (10 U. S. Statutes at Large, 332) a patent was issued to Margaret Sloan for three hundred and twenty acres of land on the so called Nemaha reservation and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Margaret Sloan and her descendants including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

These defendants further aver that Artemesia Frost, the mother of complainant, made application for an allotment of land, and her pretended claim was reported to the Interior Department, and the Interior Department adjudged and determined on the 21st day of June, 1897, as follows:

"By her own admission, Mrs. Frost's birthright claim has been extinguished. To admit her present claim would be an injustice to those of the tribe who have never received allotments, and who alone are entitled to participation in the division of the lands in the diminished reserve; would also be against public policy, and a violation of the rules and regulations of the department, which prohibit more than one allotment to an Indian for any reason
1349 whatever."

11. These defendan's further aver that the complainant never occupied or improved the S. ½ of the N. E. ¼ of section 34, tp. 25, range 8; that the complainant was born in Richardson county, in

the State of Nebraska, and continued to live in Richardson county, State of Nebraska, and has never lived upon the Omaha Indian reservation, and was not on the reservation at the time of the allotting of lands to the Omaha Indians, and was not on the Omaha reservation at the date of the commencement of this suit, and did not make a selection of the lands claimed.

These defendants further aver that Sarah F. McCreary, Philomen Frost, Charles A. Frost, Leonard Frost, Mary Frost and Frank Frost are all children of Artemesia Frost and Leonard Frost (husband and wife), and that the United States allotting agent consulted with Leonard Frost and Artemesia Frost, the parents, and found it desirable that if lands were to be allotted to the Frost family, they should be adjoining lands, and such was the wish of Leonard Frost and wife, whereupon the United States allotting agent made reservation of lands for the Frost family, including the complainant, pending the result of this litigation in section- 8 and 9, tp. 25, range 7, and which reservation has been made upon the surveyed maps in the office of the Commissioner of Indian Affairs awaiting the final determination of this suit.

These defendants further aver that the United States allotting agent, appointed by the Interior Department to investigate selections and make allotments of land, investigated, ascertained and found as a fact, that the complainant was not entitled to an allotment of any of the lands claimed by *her* and reported his said findings to the Interior Department, and which said findings and report have been approved by the said department.

That the said United States allotting agent did find upon
1350 investigation that Frank Robinson made claim to the S. ½ of the N. E. ¼ of section 34, tp. 25, range 8, and the said allotting agent did make an allotment of said land to the said Frank Robisson, and thereafter made his official report to the Commissioner of Indian Affairs, that said Frank Robinson was entitled to an allotment of the land last above described, and which said allotment was subsequently approved by the Commissioner of Indians Affairs, and by the Secretary of the Interior, and the patent therefore issued to the said Frank Robinson under date of April 11, 1900, and which said allotment was made, and said patent issued in the regular and due course of business

These defendants further aver that the complainant did not have any prior or superior or vested right to the land so patented to the said Frank Robinson, and that the allotment to him and the said patent to him were made in all respects in conformity to law.

12. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complaint demanded. And these defendants

pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
United States Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 13 1901 Geo. H. Thummel, clerk.

1351 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, a stipulation was filed in said case, which said stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

PHILEMON H. FROST, Complainant, *vs.* THE UNITED STATES OF AMERICA, Frank Robinson, a Minor, and Charles P. Mathewson, Defendants.	Docket T, No. 507. Stipulation of Facts as to Occupancy.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the facts set down after their names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Richard Robinson, whose Indian name is Mahwatha, will testify that he is a relative of Frank Robinson, a minor, (Frank Robinson being the son of a nephew of the said witness) and that he, Richard Robinson is a member of the Omaha tribe of Indians and of the full blood.

He will further testify that in the year 1890 he consulted Thomas McCauley about making a selection of land for Frank Robinson, and that the said McCauley who was then familiar with the land and the location thereof, advised the said Richard Robinson to select the south half of the north-east quarter of section 34, township 25, range 8, east; that thereupon Richard Robinson, in the year 1890, went upon the said land accompanied by his wife, and then and there made a selection of the said land and plowed around it. That the witness thinks that Ashley was the Indian agent at that time.

1352 That during the administration of Mr. Mercer as Indian agent Woodhull made claim to the same land, and then Woodhull claimed that he had plowed around a part of the same land before the witness had made the selection, and that a hearing was had before Indian Agent Mercer between Robinson and Woodhull, and as a result of the said hearing before Indian Agent Mercer,

said agent, Mercer, decided that Robinson had the better claim to the land, and that Mercer, the Indian agent then made an entry in the tract book of the said land in favor of Robinson.

The witness admits that Woodhull had plowed around a part of the said land before the date when he, Richard Robinson had made the selection in 1890.

Richard Robinson will further testify that after the hearing before Indian Agent Mercer above referred to, and right after Mercer had made the decision in favor of Robinson, that one John Wickersham and his family built a little house on the land in controversy, and lived there for a time. That Wickersham and his family continued to occupy the house for about two years, intending at that time to make claim to the land on the supposition that he would be entitled to more land than he was eventually found entitled to have, and at the end of the said two years moved away from the land.

It is agreed that the Wickersham referred to is the same Wickersham whose testimony has been taken in the above entitled cause in behalf of the complainants.

William F. Springer will testify that he is a member of the Omaha tribe of Indians, and was acting as interpreter for Allotting Agent Rankin during the time while Rankin was making the allotments under the act of 1893.

That Richard Robinson came to see Rankin two or three
1353 times during the time while Rankin was making allotments in the locality where the above described lands are situated, claiming the said lands for Frank Robinson. That at said time there was no controversy over the said land, and the said Rankin was controlled by the entry upon the tract book, and the claim of the said Richard Robinson, and made the allotment to the said Frank Robinson.

The witness Springer will further testify that in the year 1890, Henry Fontenelle had about 1800 acres of land enclosed for pasture land, and which adjoined the land in controversy on the west. The lands so enclosed for pasture purposes by the said Henry Fontenelle are tribal land, and are held under an arrangement with the tribe, or by the consent of the tribe, and that the rent therefor was paid by the said Henry Fontenelle to the tribe, and the tribe appointed their own agents for the collection of the land, and among the agents so appointed for collecting the rents were the said Richard Robinson, Spafford Woodhull and one Amos Walker.

JNO. L. WEBSTER,
Att'y for Def'l.
THOMAS L. SLOAN,
CHARLES E. CLAPP,
For Complainants.

Endorsed: Filed Sep. 3 1902 Geo. H. Thummel, clerk.

1354 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, a stipulation was filed in said case, which said stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

PHILEMON H. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Frank Robinson, a Minor, and Charles P. Mathewson, Defendants.
} Docket T, No. 507. Depositions.

Testimony taken in behalf of the complainants, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at Pender, in the State of Nebraska, on this the 22nd day of August, 1902, the complainant being represented by Thomas L. Sloan, Esq., and the defendants being represented by John L. Webster, Esq.

JOHN M. WICKERSHAM, a witness produced on behalf of the complainant, being first duly sworn, deposes and says, as follows:

Direct examination by Mr. T. L. SLOAN:

Q. State your name?
A. John M. Wickersham.
Q. Do you know the lands described as the south half of the north-east quarter of section 34, township 25, north of range 8, east?
A. Yes, sir, I do.
Q. Was you ever upon this land?
A. Yes, sir.
Q. When did you first select the land?
A. Might I have the privilege of referring to a book?
Q. Yes, sir.

1355 A. It has been quite a little while. I have been gone three years and I have it in a book. I think I have it in this book. I moved upon this land in the spring of 1898.
Q. Had you selected or marked that in any way previous to that time?
A. Nothing more than herding cattle there a few years previous. I moved on it in 1893. It was three years prior to that that we handled cattle there and made a selection at the time but we did not mark it at the time, but we had a cattle corral on it and such as that. We did not plow around it at the time.
Q. That would be in 1895, would it, that you had your corrals on it?
A. I believe it was 1894, or 1895. I have most forgotten the exact year.

Q. For whom did you claim it at that time?
A. The first claim we made would be for my wife under the old law.
Q. You expected at that time to get additional allotments?
A. Yes, sir, under the old law.
Q. What land did you expect to get at that time?
A. We expected to get 120.
Q. That included all of this described land?
A. Yes, sir.
Q. State whether any marks of any kind were upon it at the time you selected it?
A. There was not.
Q. You may state what you put upon it, and how long you occupied it?
A. We occupied it and farmed it for two years, and caused it to be; we lived upon it one year ourselves, and caused it to be
1356 a second. We broke some land, built a fence and enclosed about four or five acres; built one fence including about an acre—board fence; built a small house and a barn, a small shed barn.
Q. What was the value of those improvements when you left there?
A. About $300.00; the valuation would be about $300.
Q. To whom did you give up possession of the premises?
A. Mr. T. L. Sloan.
Q. For whom, if you know?
A. In behalf of, I think Mrs. Frost at the time.
Q. Did anybody ever occupy it or claim it other than yourself up to the time that you left?
A. No, sir; at the time I lived here I had a white man taking care of the place.
Q. Who was he?
A. Mr. Clark Ray, and he had his brother-in-law on the place residing there.
Q. Was your wife a member of the Omaha tribe of Indians?
A. Yes, sir.
Q. What degree of Omaha Indian blood is she?
A. One half.
Q. Has she an allotment of land?
A. Yes, sir.
Q. How many children have you?
A. We have five.
Q. Have you any Indian blood in you?
A. No, sir.
Q. Are your children borne upon the tribal rolls?
A. They are all on the rolls.
Q. They have all allotments of land?
1357 A. No, sir; just one.
Q. Why not?

A. Because the act of Congress passed a law at the time that specified up to a certain date.

Q. The first one of them was born in time to receive an allotment before that date was fixed?

A. Yes, sir.

Q. Where were you living the last two years?

A. Oklahoma.

Q. Is your family with you?

A. Yes, sir.

Q. And how does your family receive their annuities?

A. Through the mail, at our post office address by getting two witnesses to that effect, wherein we return the blank; we return the number for the check, and the check is forwarded to us upon receipt.

Cross-examination.

Questions by Mr. JOHN L. WEBSTER:

Q. How old are you?

A. 40 years.

Q. When were you married?

A. In 1890.

Q. On the Omaha Indian reservation?

A. I was married in Iowa.

Q. You were married in Iowa?

A. Yes, sir.

Q. You was married twelve years ago?

A. Yes, sir.

Q. When did you first go on the reservation?

A. In 1886, in April.

Q. Did your wife live on the reservation before her marriage?

1358 A. Yes, sir.

Q. Do you know how long she had been living on the reservation?

A. Off and on ever since her birth, except when she went to school; she was born on the reservation.

Q. She was a member of the Omaha Indian tribe?

A. Yes, sir.

Q. She was from her birth up a member of the tribe?

A. Yes, sir.

Q. And was at the time of your marriage to her?

A. Yes, sir.

Q. In 1898 you first moved on the land in section 34, township 25, range 8?

A. No, sir; I was on the land before that. I was handling cattle.

Q. My question is, you first moved on it then?

A. Yes, sir to stay right there and make it my home in 1898, but we were living near that within a few feet of it. We had a house

before, I and Fontenelle in partnership, and our corrals was over on the place; then I made the selection then for my wife at the time, but afterwards under the old law we found land up here and took this in preference to that and moved on it.

Q. So when you moved on the land in 1898 you did it expecting to claim it for your own family?

A. Yes, sir, for one of the children, for Henry.

Q. When did you abandon the land?

A. In the spring of 1901.

Q. When did you lease it to Thomas L. Sloan?

A. In 1899 I made arrangements with Mr. Sloan that he could have the land before I left the place, but I did not give possession of it for the simple reason I made an arrangement with these
1359 other parties to keep it until the first of the year, and I could not arrange with them until their time was out.

Q. What was the arrangement you made with Thomas L. Sloan in 1901?

A. I turned the land over to him for him to select it and take papers out for a party in this case, and as I understand it with one of the Frosts. I did not stop to take down the particulars, but that is my recollection at the time.

Q. What did he give you for your release of it, for your agreement to release it?

A. $50.00, and if they got the land he would do better, if they got the land.

Q. Did he tell you how much better he would do if they got the land?

A. About $200 better. In 1898 I moved there and took possession of the place, and I occupied it two years. Then I abandoned it to him.

Q. That would be in 1900?

A. Yes, sir. I was to let him have it after the first of the year so as to not conflict with the deal I had with the parties on the place. That is correct. I have the dates and everything. I happened to be lucky to have this book in my pocket.

Re-direct examination.

Questions by Mr. T. L. SLOAN:

Q. You say your wife is a member of the Omaha tribe?

A. Yes, sir.

Q. Do you know her parents?

A. Yes, sir.

Q. Who are they?

A. George Lieb and Mary Lieb.

Q. Which is Indian?

1360 A. Her mother.

Q. And what is her father?

A. A white man, a German.
Q. Is he free-born and full blooded white man?
A. I suppose so. He was born in Germany.
Q. Does he exercise the rights of citizenship in this country?
A. Yes, sir.
Q. And a soldier in this country?
A. Yes, sir.
Q. Are you a free-born full blooded white man?
A. I suppose so to the best of my knowledge.
Q. And a citizen of the United States?
A. Yes, sir.
Q. And your children are members of the Omaha tribe?
A. Yes, sir.

Witness excused.

By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witness, John M. Wickersham, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in the presence of the witness, and by me type-written, and that his signature to the said deposition was waived. That said deposition was taken pursuant to the agreement of parties at Pender, Nebraska, on the 22nd day of August, 1902; that both complainants and defendants were present by counsel at the taking of said depositions.

WM. S. HELLER.
Notary Public.

My fees:

Swearing one witness	.10
16 folios at 20c	3.20
	$3.30

P'd by counsel for pl'ffs.
WM. S. HELLER.

Endorsed: Filed Sep. 3, 1902. Geo. H. Thummel, clerk.

1361 Thereupon afterwards, to-wit:—on the 22nd day of September, 1902 a replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

PHILEMON H. FROST
vs.
UNITED STATES OF AMERICA ET AL. } No. 507, Doc. T.

The Replication of Philemon H. Frost, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, for replication thereunto, saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

1362 Thereupon afterwards to-wit: at the May 1902 term of said court and on the 8th day of November, 1902, the following decree was signed and filed in said case, and duly entered of record in Journal No. 1 of the proceedings of said court had on said day, to-wit:

PHILEMON H. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, FRANK ROBINSON, a Minor, and Charles P. Mathewson, Defendants. } Doc. T, No. 507. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective

parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge*.

Endorsed: Filed Nov. 8, 1902, Geo. H. Thummel, clerk.

1363 Thereupon afterwards, to-wit: on the 13th day of October, 1903, assignment- of errors, were filed in said case, which said assignments of errors are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

PHILEMON H. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA and FRANK Robinson, Defendants.

Docket "T," No. 507.
Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

1364 Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the

passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Philemon H. Frost was not entitled to claim and have allotted to him the land described in plaintiff's bill of complaint, to-wit:

The south half of the northeast quarter of section thirty-four (34) in township twenty-five (25) north of range eight (8) east of the 6th P. M.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendant- and against the complainant.

1365 Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

PHILEMON H. FROST,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1366 Thereupon, to-wit:—on the 13th day of October, 1903, petition for appeal was filed in said case, which said petition for appeal is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

PHILEMON H. FROST, Complainant, vs. THE UNITED STATES OF AMERICA and FRANK Robinson, Defendants.	Docket "T," No. 507. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and preju-

diced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal
1367 in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

PHILEMON H. FROST,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

Thereupon, to-wit:—on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following, to-wit:—

1368 507. T.

Know all men by these presents, that we, Philemon H. Frost, Charles A. Frost, Sarah F. McCreary are held and firmly bound unto The United States of America and Frank Robinson in the full and just sum of one hundred dollars, to be paid to the said The United States of America and Frank Robinson heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Philemon H. Frost plaintiff and The United States of America and Frank Robinson defendant- decree was rendered against the said Philemon H. Frost and the said Philemon H. Frost has obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The

United States of America and Frank Robinson citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Philemon H. Frost shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

PHILEMON H. FROST. [SEAL.]
CHARLES A. FROST. [SEAL.]
SARAH F. McCREARY. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1369 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1370 The United States of America to the United States of America and Frank Robinson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Philemon H. Frost is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #1995 No. 507 United States circuit court, district of Nebraska. Philemon H. Frost *vs.* United States, *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

1370*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, and Frank Robinson, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney, personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1370*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

1371 Thereupon afterwards, to-wit:—on the 19th day of April 1901 amended bill of complaint was filed in said case, which said amended bill is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

LEONARD L. FROST, Complainant, *vs.* THE UNITED STATES OF AMERICA, Leon C. Fontenelle, a Minor; Mahashahane Hallowell, and Charles P. Mathewson, Defendants.	No. 508, Doc. T. Amended Bill of Complaint.

To the honorable the judges of said court:

Leonard L. Frost brings this his bill of complaint against the defendants, and says he is a member of what is or until recently was known as the Omaha tribe of Indians in Nebraska, being the tribe of Indians designated as the Omahas in the various statutes of the United States, and the treaties herein set forth.

That he is of what is known as mixed blood and is a lineal descendant from one Michael Barada or Michael Berda, as he was sometimes designated, who intermarried with one Taegleha Hacienda, an Indian woman of the full blood and a member of said tribe. That your orator and his ancestors back to said Michael Barada and his said wife have continually maintained their domicile with said tribe, and have maintained tribal relations therewith so long and so far as any tribal relations have been maintained by said tribe, and have participated in the property and other rights of said tribe and have been recognized by the said tribe and the members thereof as members of said tribe and are entitled to all its rights and privileges.

Further complaining your orator says that on the 16th day
1372 of March A. D. 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain lands in lieu whereof it received its present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including the ancestors of your orator. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States Statutes at Large vol. 10, page 1043, to which for greater certainty your orator refers.

And your orator further shows that on the 6th day of March, A. D. 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which other matters and things more fully appear in said treaty as published in the United States Statutes at Large, vol. 14, page 667, to which for greater certainty your orator begs to refer.

And further showing your orator says that on the 7th day of August, A. D. 1882, an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age one eighth of a section, to each orphan child one eighth of a section, and to each other person under eighteen years of age one sixteenth of a section. That
1373 allotments should be *selected by the Indians*, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which said matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22, page 341, to which for greater certainty your orator refers.

Your orator further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provision of said act in December, 1884, and at subsequent times since.

Your orator further states that he is a member of the Omaha tribe by blood and descent, by recognition as such by both the tribal and governmental authorities, and according to the customs, rules and regulations of the Omaha tribe of Indians. That such relationship and membership has never been terminated. That his mother, Artemesia Frost, was recognized as a member of the Omaha tribe of Indians, and that she received an allotment on the Nemaha half breed tract, and that she has lived on the present reservation and does live upon said reservation at the present time. That his mother since the treaty of 1865 has been recognized as a member of the Omaha tribe of Indians and has been enrolled upon the tribal roll and has drawn annuity money for herself and some of her children, and has had the benefits of tribal property, the mill and other common property of the tribe. That Artemesia Frost was the daughter of Margaret Sloan, who was also recognized as a member of the tribe and received the benefits of the tribal property under the treaty of 1854, and the later treaty of March 6th, 1865.

That your orator has selected the following described land for allotment, of which he is now in possession, to-wit: Lots 5 and 6 and the S. E. ¼ of the N. W. ¼ all of section 12, township 25 north,
1374 range 6 east of the 6th P. M. in Nebraska; that such described property is a part of the land described and referred to in the treaties and acts of Congress hereinabove set out and has been surveyed in accordance with the treaties and acts of Congress; that your orator has placed valuable improvements upon the above described premises, that no person or persons claim or did claim the same when first selected by your orator in accordance with the laws relating thereto and the notice received from the council of the Omaha tribe of Indians and that it is occupied by your orator

and he is the only person who has occupied said land under a claim for allotment. That application for the allotment of said land has been refused your orator by the Department of the Interior.

Your orator further says that on the 3rd day of March, A. D. 1893, an act of Congress was passed amending or extending the act of August 7th, 1882, providing that with the consent of the Omaha tribe of Indians expressed in open council further allotments should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893, but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent by the Omaha tribe was given in open council May 1899, and immediately thereafter assignments for allotments were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land in controversy without investigation as to the priority of claim and without notice to the claimant.

1375 To Leon C. Fontenelle, a minor, whose next friend is Eugene Fontenelle has been assigned lots 5 and 6 in section 12 township 25 north range 6 east and to Mahashahane Hallowell the S. E. ¼ of the N. W. ¼ section 12 township 25 north range 6 east.

That trust patents therefor naming the United States as trustee of date April 11th, 1900, have been issued to Leon C. Fontenelle and Mahashahane Hallowell respectively. No rights were acquired by said trust patents but owing to the fact the assignments were made during the pendency of this suit makes Leon C. Fontenelle and Mahashahane Hallowell necessary parties defendant.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land and to place in possession the allottee or lessee, and that he threatens to place into possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainant who is now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land in controversy and his threats that he will remove your orator from the land makes him a necessary party to this suit.

And your orator further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claims to be so entitled under any allotment act or any grant made by Congress, may commence, prosecute or defend an action suit or proceeding in relation to their rights thereto in

the proper circuit court of the United States and that the
1376 said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305, which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator begs to refer.

Your orator further states that the defendant The United States of America, claims that by virtue of the 4th art. of the treaty of March 6th, 1865, the assignment to be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members thereof of full blood, "including their half breed and mixed blood relatives now residing with them." The said defendant claims that your orator and his ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your orator admits that he and his ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation and the rights of allotment under the treaty of March 6th, 1865, or their rights to allotment under the act of Congress of August 7th, 1882. That it was not so
considered by the tribe nor the officers of the United
1377 States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art. of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871, contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882, who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent,

— the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman who never resided on the reservation, but at all times and at the time of the treaty of March 6th, 1865, and ever since has resided away from the reservation.

Your orator further states that no new rights were acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your orator further states that the defendant, The United
1378 States, claims that the complainant or his ancestors have received allotment of land under and by virtue of the treaty of July 15th, 1830, and 10th art. thereof and by the acceptance of said allotment under the policy of the Indian office your orator is not entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your orator admits that his ancestor received an allotment of land under the provisions of 10th art. of the treaty of July 15th 1830, as a half breed member of the Omaha tribe of Indians, that the quantity so assigned was one half the amount provided by said treaty and that the said allotment was not accepted by his ancestor nor given to his ancestor in consideration of the relinquishment of any other rights than those to which she was entitled on the Nemaha reservation.

Numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th 1830, sums of money, which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiencies in the half breed reservation under the provisions of the act of Congress, section 6th, clt. 66, of the third session of the 35th Congress, 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th, 1882; that your orator has not in any manner assigned or relinquished *their* right of claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians, neither
1379 has the United States by the executive department of the Government nor the enactment of any law authorized this complainant or his ancestors or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant nor any member of this tribe has been accepted or approved of by the United States or any of its officers.

Wherefore your orator shows to your honors that he is without a remedy at law and remediless in the premises unless relieved by

your honors in this court of equity and he therefore prays the aid of the court in the premises and that said defendants, The United States of America, Leon C. Fontenelle, a minor, by his next friend, Eugene Fontenelle and Mahashahane Hallowell may answer your orator's bill but without oath, answer under oath being expressly waived.

That it be ordered and decreed that the patents issued to Leon C. Fontenelle and Mahashahane Hallowell are null and void and that the selection as made by your orator is his allotment and prior and superior to the claims of the said Leon C. Fontenelle and Mahashahane Hollowell, and that your orator and his heirs be decreed entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orator further prays for a preliminary order of injunction against the defendants Charles P. Mathewson, Leon C. Fontenelle and Mahashahane Hallowell, enjoining and restraining each of them, their agents and employés from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your ora-
1380 tor the most gracious writ of subpœna to be issued under the seal of this court directed to the United States of America, Leon C. Fontenelle, minor, by his next friend Eugene Fontenelle and Mahashahane Hallowell, therein and thereby commanding them on a day certain and under a certain penalty therein to be limited personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed Apr. 19 1901 Geo. H. Thummel, clerk.

1381 Thereupon afterwards, to-wit:—on the 13th day of July, 1901, an answer was filed in said case, which said answer is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

LEONARD L. FROST, Complainant,
vs.
THE UNITED STATES OF AMERICA, Leon C. Fontenelle, a Minor; Mahashahane Hallowell, and Charles P. Mathewson, Defendants.

Doc. T, No. 508. Answer to Amended Bill of Complaint.

The answer of The United States of America, Leon C. Fontenelle, a minor; Mahashahane Hallowell, and Charles P. Mathewson, defendants, to the amended bill of complaint of Leonard L. Frost, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer say:

1. These defendants deny that the complainant is an Omaha Indian and deny that the complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary these defendants aver that the said complainant is a white man, and a citizen of the United States, and that his ancestors were white persons and citizens of the United States, and that his said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that the
1382 complainant or his ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

These defendants for further answer aver that the complainant claims to trace his lineage back to Michael Barada, who intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leave the complainant to *her* proof in that regard.

That there was born to the said Michael Barada and his wife, in the year 1811, a daughter by the name of Margaret Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of her father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of Omaha tribe of Indians; that the said Margaret Barada lived in the city of St. Louis with her parents until the year 1883, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Margaret Barada intermarried with one Thomas Sloan, a free born white man of Irish nationality and a citizen of the United States, and that said Thomas Sloan and his wife Margaret Sloan continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two
1383 years, until some time after the approval — act of Congress of August 7, 1882, (22 U. S. Stats. at Large, 341), hereinafter more particularly referred to.

That to the said Thomas Sloan and his wife Margaret there was born a daughter named Artemesia (the mother of this complainant) and the said Artemesia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and was never on the Omaha reservation until after the act of Congress of August 7, 1882. That the said Artemesia Sloan, so being a white woman and a citizen of the United States, married a white man named Leonard Frost, a free born white man and a citizen of the United States. There was born to the said Leonard Frost and his wife Artemesia, a son who is the complainant herein, and the said complainant being such white person and citizen of the United States took the status of his father and continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, *who* came to the Omaha reservation about 1900 with the hope and expectation of obtaining an allotment of land under the said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing
1384 with the Omaha tribe of Indians, and which by these terms excluded complainant, being only one sixteenth Indian blood, and he not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7,

1882, (22 U. S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit:—March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians, and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior January 26, 1871, and which said schedule did not contain the names of the complainant or his ancestors, and which said schedule when so approved by the Interior Department, became and was a judgment by the Interior Department, that neither the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

1385 3. These defendants further answering say: That in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff, and Robert H. Ashley and Henry Fontanelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan,

Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedents or descendants of said parties, so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant. That the said Thomas Sloan was the grandfather of this complainant, and the said Artemesia Sloan was the mother of this complainant, and the Peters family and descendants of Michael Barada and uncles and
1386 aunts of complainant.

4. These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Sloan family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Sloan family did then and there make application to Alice C. Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Sloan family to be investigated, and being of the opinion as the result of said investigation that the Sloan family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Sloan family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. The Indians of the reservation manifested the most determined opposition to the Sloan and Peters families, being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting the lands for decision as to the right of the parties to receive allotment.

As showing the position taken by the department in deciding the cases of the absentee mixed bloods, the following is quoted from a latter addressed to the special agent on September 13, 1883,
1387 in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas, relates to the treaty of March 6, 1865, (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe including their half or mixed blood relatives now residing with them.'

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date — December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having — in no manner identified with the tribe since that
1388 time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters (a relative of complainant) and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case.

The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

1389 Antoine married a French woman and his children were born and reared in St. Louis.

Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war.

He has excellent credentials as to character and so has his wife.

Article 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed-bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation.

1390 The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation, and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were borne upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father, Michael Barada, to-wit: William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others persisted in remaining intruders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington, was so short, we could not tell you all about intruders on our tribal land.

There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation.
1391 He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under rules of this treaty, we were told.

We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side; that the case was sent on to Washington; that it was decided according to your treaty and the Peters family had to go away.

They have been threatening to come back ever since. Last year Frank Peters came back, selected land in township 24, range 8, and broke 40 acres.

We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off.

We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribes, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take
1392 the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and

tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land.

These intruders have selected come of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888, make his report of the status of said claims, to the Secretary of the Interior and requested authority to remove said persons including the said Sloan family from the said reservation, and afterwards on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

1393 SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865 (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. submitted by the Omaha council which is represented to

contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotment of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relation- residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871,
1394 or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

7. These defendants further aver that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors *and* failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors, and Frank Peters, to leave the said reservation, and that they informed said agent that they would not
1395 do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the

Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested that the Hon. Secretary of War *to* cause the commander of the military post nearest to reservation upon the request of the United States Indian agent, to furnish military aid, to remove from the land of said reservation, said Walter Peters, Luke Sailors and Frank Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as she was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district
1396 of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontanelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein, from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken, and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. *This* defendant- further avers that afterward the said Sloan family endeavored to have themselves adopted into the Omaha tribe of Indians, and to have themselves recognized by the Interior Department as members of the Omaha tribe of Indians, and to that end submitted to the department certain petitions purporting to be signed by certain members of the Omaha tribe of Indians; that under date of September 6, 1894, the department ruled that the said Margaret Sloan and Thomas L. Sloan, should not be admitted

to membership in the Omaha tribe of Indians, and accordingly so ordered, and in which order and opinion the department held as follows:

"Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure separate and distinct from their alleged rights as Omaha Indians by blood,
1397 and that such alleged right is not necessarily a test for such adoption, there remains the right to admission by the free will and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seem to be in proper form, and to express the desire of a majority of the members of the tribe that the persons in question shall be placed upon the rolls of the tribe, and be admitted to all the rights and privileges of other members thereof.

Besides the opposing petition hereinbefore referred to, the department is in receipt of recent information which shows that of the one hundred and fifty seven persons whose names appear on the six petitions presented with your letter, only seventy now favor the claimants; that eleven others have since assented to their adoption making eighty-one in all now favorable; that twenty-four of the signatures thereon were not written by the parties whose names are given, nor was the use of their names authorized by them, that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women—neither of whom have any voice in such matter; that one of the nine members of the council purporting to have signed one of the petitions, did not sign nor authorize the use of his name, and further, that there are about one hundred and eighteen male members of the tribe, of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petitions in question, the facts presented seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe that the Sloans be not admitted to membership and it is so ordered.

In reference to that part of your report wherein you state that
1398 Thomas L. Sloan has held and improved a tract of land since 1881 or 1882, on the Omaha reservation, it would seem that he is doing so in defiance of any legal authority of occupation."

That after the above order and ruling of the department, the counsel for Margaret Sloan and Thomas L. Sloan applied to the department for reconsideration of the adoption case, and the department under date of November 17, 1896, re-affirmed this ruling and among other things therein said:

"It is not denied, nor has it ever been, that the Sloans, mother and son, are of part Omaha Indian blood. The tribe recognized them as such and made provisions for them, with others, by the treaty of 1830, and in the opinion of the department, and the Omahas themselves, their claims as such mixed bloods were extinguished by the lands given them under the terms of the tenth article of the treaty named. * * *

The claims of Margaret and her son William E. were extinguished prior to the birth of Thomas L. It is nowhere alleged or claimed that the latter is the offspring of a mother of Indian blood, much more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claims of Margaret and Thomas L. are based upon their birth-right as Omaha Indians and upon their alleged adoption in recent years by the tribe.

The birth right claim of Margaret has been extinguished.

Thomas L. never had such claim. Neither of them have any claim by adoption, never having been regularly, fairly or properly adopted by the tribe, as was shown by department letter of September 6, 1894.

Notwithstanding that Mr. Breckenridge has advised the department by letter dated the 30th ultimo, of his withdrawal as attorney for the claimants, I have caused this review of the case
1399 to be made, and adhere to the opinion expressed in department letter of September 6, 1894, that the persons named have no valid, legal claims to membership with the Omaha tribe of Indians."

And defendant- avers that the above ruling of the Department of the Interior established the fact that Margaret Sloan and her descendants the plaintiff herein, then were not and had not theretofore been members of the Omaha tribe of Indians, and the defendant-avers that the said Margaret Sloan and her descendants, the plaintiff herein, are not and never have been members of the Omaha tribe of Indians.

10. These defendants for further answer avers that under article 10 of the treaty of July 15, 1830, (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to Margaret Sloan for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Margaret Sloan and her descendants including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

These defendants further aver that Artemesia Frost, the mother of complainant, made application for an allotment of land, and her pretended claim was reported to the Interior Department, and the Interior Department adjudged and determined on the 21st day of June, 1897 as follows:

"By her own admission, Mrs. Frost's birthright claim has been extinguished. To admit her present claim would be an injustice to those of the tribe who have never received allotments, and who alone are entitled to participation in the division of the lands
1400 in the diminished reserve; would also be against public policy, and a violation of the rules and regulations of the de-

partment, which prohibit more than one allotment to an Indian for any reason whatever."

11. These defendants further aver that the complainant never occupied or improved lots 5 and 6 and the S. E. ¼ of the N. W. ¼ all of section 12, township 25, north range E.; that the complainant was born in Richardson county, in the State of Nebraska, and continued to live in Richardson county, State of Nebraska, and has never lived upon the Omaha Indian reservation, and was not on the reservation at the time of the allotting of lands to the Omaha Indians, and was not on the Omaha reservation at the date of the commencement of this suit, and did not make a selection of the lands claimed.

These defendants further aver that Sarah F. McCreary, Philomen Frost, Charles A. Frost, Leonard Frost, Mary Frost and Frank Frost are all children of Artemesia Frost and Leonard Frost, (husband and wife) and that the United States allotting agent consulted with Leonard Frost and Artemesia Frost, the parents, and found it desirable that if lands were to be allotted to the Frost family, the should be adjoining lands, and such was the wish of Leonard Frost and wife, whereupon the United States allotting agent made reservation of lands for the Frost family, including the complainant, pending the result of this litigation in section 8 and 9, tp. 25, range 7, and which reservation has been made upon the surveyed maps in the office of the Commissioner of Indian Affairs awaiting the final determination of this suit.

These defendants further aver that the United States allotting agent, appointed by the Interior Department to investigate selections and make allotments of land, investigated, ascertained and found as a fact that the complainant was not entitled
1401 to an allotment of any of the lands claimed by her and reported his said findings to the Interior Department, and which said findings and report have been approved by the said department.

That the said United States allotting agent did find upon investigation that Leon C. Fontenelle made claim to lots 5 and 6, and Me-ma-she-ha-ne Hollowell made claim to the S. ½ of the N. W. ¼ all of section 12, township 25, range 6, and the said allotting agent did make an allotment of the said lands to the said Leon C. Fontenelle and the said Me-ma-she-ha-ne Hollowell, and thereafter made his official report to the Commissioner of Indian Affairs, that the said Fontenelle and the said Hallowell were entitled to an allotment of lands last above described respectively, and which said allotments were subsequently approved by the Commissioner of Indian Affairs and by the Secretary of the Interior, and patents therefore were issued to the said Fontenelle and the said Hallowell under date of April 11, 1900, and which said allotments were made, and said patents issued in the regular and due course of business.

These defendants further aver that the complainant did not have any prior or superior or vested right to the land so patented to the said Fontenelle and to the said Hallowell, and that the allotments

to them and the said patents were made in all respects in conformity to law.

12. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complaint demanded.

1402 And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS,
United States Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Jul- 13 1901 Geo. H. Thummel, clerk.

1403 Thereupon afterwards, to-wit:—on the 21st day of August, 1902 stipulation of facts was filed in said case, which said stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

LEONARD L. FROST, Complainant, *vs.* THE UNITED STATES OF AMERICA, LEON C. Fontenelle, a Minor; Mahashahane Hallowell, and Charles P. Mathewson, Defendants.	Doc. T, No. 508. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Simeon Hallowell will testify that he is the father of Mahashahane Hallowell who has been allotted the S. ½ of the N. W. ¼ of section 12, township 25, range 6, (being part of the land claimed by Leonard L. Frost, in his amended bill of complaint); and Simeon Hallowell will further testify that he made claim for the land for Mahashahane Hallowell about the year 1890. That he marked the land and plowed around it in the year 1892, and had it entered in the tract book at the agency in the year 1892, and in the year 1893 marked said land over again; that he made no improvements on the land, but made a lease of it.

F. B. Hutchins will testify for complainant:

That he has occupied for five years the following described
1404 lands: Lots N. 5 and 6 and the S. E. ¼ of the N. W. ¼ of section 12, township 25, R. 6 E. That during said five years I have leased the land above described from Leonard Frost, and that prior thereto I had leased the same land from the U. S. Indian agent.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainant.

Endorsed: Filed Aug. 21, 1901, Geo. H. Thummel, clerk.

1405 Thereupon afterwards, to wit:—on the 3rd day of September, 1902, stipulation of evidence was filed in said case, which said stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

LEONARD L. FROST, Complainant, *vs.* THE UNITED STATES OF AMERICA, LEON C. Fontenelle, a Minor; Mahashana Hallowell, and Charles P. Mathewson, Defendants.	Docket T, No. 508. Stipulation of Evidence.

It is hereby stipulated that Simeon Hallowell will testify in behalf of the defendants, to the facts set down below and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken, as follows:

That Mahashahana Hallowell is his wife, and not his daughter, as appears in another statement, and this statement is made by way of correction of an error in a former statement.

Simeon Hallowell will further testify that when he selected the south half of the north-west quarter of section 13, township 25, range 6 for his wife in the year 1890, that there were no marks or evidence of any selection of the same land by any other person; that when he marked the land and plowed around it in the year 1892 that he would have respected the marking or claim of any other person if there had been any evidence of any such marking or evidence of any selection on the land.

It is further agreed that the defendants may file in the case the lease and agreement which Simeon Hallowell made of the said land.

1406

JNO. L. WEBSTER,
Att'y for Def'ts.
THOMAS L. SLOAN,
CHARLES E. CLAPP,
Att'ys for Complainants.

Endorsed: Filed Sep. 3 1902 Geo. H. Thummel, clerk.

1407 Thereupon afterwards, to-wit:—on the 22nd day of September, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

LEONARD FROST
v.
UNITED STATES OF AMERICA ET AL. } No. 508, Doc. T.

The Replication of Leonard Frost, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, for replication thereunto saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

1408 Thereupon afterwards, to-wit: at the May 1902 term of said court and on the 8th day of November, 1902, the following decree was signed and filed in said case and duly entered of record in Journal No. 1 of the proceedings of said court had on said day, to-wit:

LEONARD L. FROST, Complainant, *vs.* THE UNITED STATES OF AMERICA, LEON C. Fontenelle, a Minor; Mahashahane Hallowell, and Charles P. Mathewson, Defendants.	Doc. T, No. 508. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendant- and against the complainant.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

1409 Thereupon afterwards, to-wit: on the 13th day of October 1903, assignment of errors was filed in said case, which said assignment is in words and figures following, to-wit:

1410 In the Circuit Court of the United States for the District of Nebraska.

LEONARD FROST, Complainant, *vs.* THE UNITED STATES OF AMERICA, LEON C. Fontenelle, Mahashahahane Hallowell, and Charles P. Mathewson, Defendants.	Docket T, No. 508. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously hold- that such persons are deprived of their tribal rights, if they were not *bona fide*

residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

1411 Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Leonard Frost was not entitled to claim and have allotted to *them* the land described in plaintiff's bill of complaint, to-wit: Lots five (5) and six (6) and the southeast quarter of the northwest quarter of section twelve (12) in township twenty-five (25) north of range six (6) east of the 6th P. M.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

LEONARD FROST,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1412 Thereupon afterwards, to-wit:—on said 13th day of October, 1903, petition for appeal was filed in said case, which said petition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

LEONARD FROST, Complainant, vs. THE UNITED STATES OF AMERICA, LEON C. Fontenelle, Mahashahane Hallowell, and Charles P. Mathewson, Defendants.	Docket T. No. 508. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States and that a transcript of the record and proceedings, duly authenticated may be sent to said court.

1413

LEONARD FROST,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fized at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903, Geo. H. Thummel, clerk.

Thereupon afterwards to-wit:—on said 13th day of October, 1903, a bond was filed in said case, which said bond is in words and figures following, to-wit:

1414 508, T.

Know all men by these presents, that we, Leonard Frost, Charles A. Frost, and Sarah F. McCreary are held and firmly bound unto The United States of America, Leon C. Fontenelle and Memashe ha ne Hallowell in the full and just sum of one hundred dollars to be paid to the said The United States of America Leon C. Fontenelle & Memashe ha ne Hallowell heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Leonard Frost plaintiff and The United States of America, defendant judgment was rendered against the said Leonard Frost and the said Leonard Frost has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, Leon C. Fontenelle & Memashe he ne Hallowell citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Leonard Frost shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

LEONARD FROST. [SEAL.]
CHARLES A. FROST. [SEAL.]
PHILEMON H. FROST. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1415 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1416 The United States of America to the United States of America, Leon C. Fontenelle, Mahashahane Hallowell, and Charles P. Mathewson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Leonard Frost is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #1994. No. 508 United States circuit court, district of Nebraska. Leonard Frost *vs.* United States *et al.* Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

1416*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Leon C. Fontnelle, Mahashahane Hallowell, and Charles P. Mathewson by handing to and leaving a true and correct copy thereof with John L. Webster their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1416*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the

same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

1417 Thereupon afterwards, to-wit:—on the 28th day of May 1901, amended bill of complaint was filed in said case, which said amended bill is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MAGGIE E. ROCKWELL, Complainant, *vs.* THE UNITED STATES OF AMERICA, John McCauley, Poncansan Lyon, Hoodata Lyon, Fannie Springer, and Philip Blackbird, Minors, by Their Next Friend, Nedawe Walker, and Chas. P. Mathewson, Defendants.	Amended Bill of Complaint. Doc. T, No. 509.

To the honorable the judges of said court:

Maggie E. Rockwell, brings this her bill of complaint and states that the claims made by her arise under various acts of Congress and treaties made by and between the United States and the Omaha tribe of Indians. That she is a claimant for an allotment of land for herself and children and that under and by virtue of an act of Congress approved February 6th, 1901, jurisdiction is conferred upon this court of claims made by Indians or persons of Indian descent for allotment under any law or treaty.

That your oratrix is a daughter of one Euphrasia Peters who in turn was a daughter of Antoine Barada, he being a son of Michael Barada, a white man, and Tagleha Haceinda, an Indian woman of the full blood, and a member of the Omaha tribe of Indians. That each of the ancestors of your oratrix as named were members of the Omaha tribe of Indians and duly recognized as such by the United States and the Omaha tribe of Indians. That both Antoine Barada

and Euphrasia Peters received allotments of land on the
1418 Nemaha half breed reservation as Omaha Indians. That your oratrix is a member of the Omaha tribe of Indians by blood and descent, by the customs and rules and regulations of the said Omaha tribe of Indians and that neither your oratrix or her ancestors relinquished or terminated their membership with said tribe. That your oratrix has made a selection of land for allotment which has been refused her and her children.

Further complaining your oratrix states that under and by virtue of the treaty of March 16th 1854, the present reservation was set apart, including the lands claimed by your oratrix, and that Euphrasia Peters and Antoine Barada were recognized and participated in the annuities under its provisions which matters and things more fully and at large appear in the U. S. Statutes at Large, vol. 10, page 1043, to which for greater certainty your oratrix begs to refer.

And your oratrix further states that on the 6th day of March 1865 another *variety* was entered into between the same parties in which there was a provision for allotment which with other matters and things more fully and at large appear in the Statutes at Large vol. 14, page 667 to which for greater certainty your orator begs to refer.

Further complaining your oratrix states that on the 7th day of Aug. 1882 an act of Congress was approved providing allotments for the Omaha Indians and under which allotments have been made. And that said act was amended by an act approved March 3rd, 1893 under — allotments *which* have also been made. That the matter of selection in such cases *were* left to the Indians to select for themselves and the heads of families for their minor children. That your oratrix selected for herself the S. ½ of the S. E. ¼ of section 17, and N. ½ of the N. E. ¼ of section 20, as the head of a family, and for her minor children as follows, the S. ½ of the
1419 S. W. ¼ of section 17, for Walter Rockwell and for Rena Rockwell the N. ½ of the N. W. ¼ of section 20, all in township 25 north and range 7 east of the 6th P. M., in the State of Nebraska. That the selections when made were uncultivated, unoccupied and unclaimed lands. That your oratrix had the land marked by plowing around it and planting thereon seed and small trees. That she was prevented from occupying the land by its being leased to speculators. That her children are both living and were of the ages of 18 and 17 years at the time of filing of this action.

Further complaining, your oratrix states that during the spring of 1900 the act of Congress approved March 3d, 1893 was accepted by the consent of the Omaha Indians and immediately thereafter allotments were made under its provi ions. That the allotments therein provided that the allotments should be made from the residue of lands after fulfilling the rights and claims for allotments under the original act of Aug. 7th, 1882.

That the selection of your oratrix for herself is under the provisions of the original act, as are forty acres selected for each of her

children, and that they are superior to allotments since made to other persons. That during the past year and since the commencement of this action allotments have been made to other claimants of the land herein described under the provisions of the act approved March 3rd, 1893, and that although the allotting agent was instructed to respect the selections of those who had cases pending in court where they were the first to select the land for allotment. That wholly disregarding his instructions the allotting agent allotted the land of your oratrix and of her children to other parties as follows: The S. W. ¼ of the S. E. ¼ and the S. E. ¼ of the S. W. ¼ to Poncansan Lyon; the S. E. ¼ of the S. E. ¼ of section 17 to
1420 Hoodate Lyon, who are minors, and whose father and next *of* friend is Nathan Lyon; the N. W. ¼ of the N. E. ¼ of section 20 to Fanny Springer, who is a minor, and whose father and next friend is John Springer; the N. E. ¼ of the N. E. ¼ of section 20 to Nadawe Walker; the S. E. ¼ of the S. W. ¼ of section 17 to John McCauley whose father and next friend is Theodore McCauley; and the N. ½ of the N. W. ¼ of section 20, all in township 25 N., and range 7 east of the 6th P. M., in Nebraska to Phillip Blackbird who is a minor and whose father and next friend is James Blackbird. That all of said lands are leased to speculators who have sub-let it to farmers under the direction of Charles P. Mathewson. That he collects the rents from the land and disburses it to the allottees named, and that he refuses to recognize the rights or claims of your oratrix and her children. That because of his acts and the claims of the allottees since the commencement of this action they have become necessary parties to this suit.

That the defendants claim that the rights of your oratrix and her ancestors were terminated by allotments made to them under the provision of the treaty of July 30th, 1830, and because they were not living upon the reservation March 6th, 1865. Your oratrix states the fact to be that such was not the intention of the treaty nor of the Indians nor the officials who at the time were carrying the provisions of said treaties into effect. That allotments were to persons against whom every objection could be made as is made against her. That the provisions of the act of Congress of 1859 3rd session of 35th Congress section 6, chapter 66 clearly shows that the relinquishment on receiving benefits from the half breed tract extended only to claims on the Nemeha reservation.

Wherefore your oratrix shows to your honors that she
1421 is without a remedy in the premises unless relieved by this court of equity and she therefore prays the aid of the court in the premises, and that the defendants, The United States, Charles P. Mathewson, John McCauley, Poncansan and Hoodate Lyon, minors, by their father and next friend Nathan Lyon, Philip Blackbird by his father and next friend James Blackbird, and Fanny Springer minor by her friend and father, John Springer, and Nedawe Walker, may answer the complaint of your oratrix, but not under oath, answer under oath being hereby waived. That it be

ordered and decreed that the patents issued to Poncasan Lyon, Hoodate Lyon, John McCauley, Phillip Blackbird, and Nedawe Walter are null and void and that selections as by your oratrix for herself and for her children are prior and superior to all other claims. That the complainant recover from the defendants judgment for the reasonable value of the premises for the time that — have wrongfully withheld.

And may it please your honors to grant to your oratrix the most gracious writ of subpœna to issue under the seal of the court directed to John Springer next friend of Fanny Springer, Theodore McCauley next friend of John McCauley, Nathan Lyon next friend of Poncansan Lyon and Hoodate Lyon, James Blackbird next friend of Phillip Blackbird and Nedawe Walker, Charles P. Mathewson, commanding them on a certain day and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide by and perform such order and decree as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHAS. E. CLAPP, *Of Counsel.*

Endorsed: Filed May 28 1901 Geo. H. Thummel, clerk.

1422 Thereupon afterwards, to-wit: on the 21st day of September, 1901, an answer was filed in said case, which said answer is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MAGGIE E. ROCKWELL, Complainant,
vs.
THE UNITED STATES OF AMERICA, John McCauley, Poncansan Lyon, Hoodate Lyon, Fanny Springer, and Phillip Blackbird, Minors, by Their Next Friend, Nedawe Walker, and Chas. P. Mathewson, Defendants.

Doc. T, No. 509. Answer to Amended Bill of Complaint.

The answer of The United States of America, John McCauley, Poncansan Lyon, Hoodate Lyon, Fanny Springer, and Phillip Blackbird, minors, by their next friend, Nedawe Walker, and Charles P. Mathewson, defendants, to the amended bill of complaint of Maggie E. Rockwell, complainant.

These defendants now and at all times hereafter saving and reserving unto *himself* respectively all benefits and advantage of

exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto and unto so much and — parts thereof as these defendants are advised is or are material or necessary for *him* to make answer unto these defendants for *his* joint and several answer say:

1. These defendants deny that the complainant is an Indian and deny that complainant is or ever was a member of the Omaha tribe of Indians of Nebraska. Upon the contrary, these defendants aver that the said complainant is a
1423 white woman, and citizen of the United States, and that her ancestors were white persons and citizens of the United States, and that her said ancestors were not Indians and were not members of the Omaha tribe of Indians of Nebraska; and these defendants deny that complainant or her ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States, as members of the Omaha tribe of Indians.

These defendants for further answer avers that the complainant claims to trace her lineage back to Michael Barada, who had intermarried with an Indian woman by the name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood, or the blood of some other Indian tribe, and therefore leaves the complainant to her proof in that regard.

That there was born to the said Michael Barada and his wife in the year —, a son by the name of Antoine Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of his father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Antoine Barada lived in the city of St. Louis with his parents until the year 1885, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha tribe of Indians.

1421 That the said Antoine Barada intermarried with one Josephine Vien, a free born white woman of French nationality and a citizen of the United States, and that said Antoine and his wife Josephine Vien continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years until some time after the approval of the act of Congress of August 7, 1882 (22 U. S. Stats. at Large 341) hereinafter more particularly referred to.

That to the said Antoine Barada and his wife Josephine there was born a daughter named Euphrasia (the mother of this complainant) and the said Euphrasia was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of her father and became and was a white woman and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis and was never on the Omaha reservation until after the act of Congress of August 7 1882. That the said Euphrasia Barada, so being a white woman and a citizen of the United States, married a white man named Fulton Peters, a white man of German nationality, and a citizen of the United States. There was born to the said Fulton Peters and his wife Euphrasia, a daughter named Maggie, who is the complainant herein, and the said Maggie, being such white person and citizen of the United States taking the status of her father continued to reside in the city of St. Louis, and in Richardson county, Nebraska, until after the approval of the act of Congress of August 7, 1882, when she came to the Omaha reservation with her parents, with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

1425 2. These defendants for further answer aver that the complainant did not live with the Omaha tribe of Indians on the reservation at the time of treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large 667), the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded Maggie E. Rockwell, being only one-sixteenth Indian blood, and she not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882 (22 U. S. Statutes at Large 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865; and these defendants further aver that the said complainant was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the direction of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by

the chiefs of the Omaha tribe of Indians and transmitted and
1426 submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the complainant or her ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the complainant nor any of her ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say; that in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to, wherein Margaret Sloan, Thomas L. Sloan William Barada, Mary Sailors, Frank Peters and Walter Peters, being of the same family with this plaintiff; and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, they made claim that he had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States Indian agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, "That the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan,
William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan,
1427 Katherine Whippern, William Barada, Antoine Narada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors or any of the immediate antecedants or descendants of said parties, so far as I know their names," and which said report is a matter of record in this court, and binding upon the parties thereto, including this complainant. That the said Antoine Barada was the grandfather of this complainant, and the said Euphrasia Peters and Fulton Peters were the parents of this complainant, and Josephine Peters and Frank Peters and Mary Sailors were brothers and sisters of complainant.

These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large, p. 341) the said Peters family and other half breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Peters family did then and there make application to Alice C.

Fletcher, the United States special allotting agent for lands to be allotted to them in severalty on the Omaha Indian reservation, and that Alice C. Fletcher, as United States allotting agent, caused the claim of the Peters family to be investigated, and being of the opinion as the result of said investigation that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* said department ruled and determined that the Peters family were not members of the Omaha tribe of Indians, and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

1428 5. The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent charged with the work of allotting lands for decision as to the right of the parties to receive allotment.

As showing the position taken by this office in deciding the cases of the absentee mixed bloods, the following is quoted from a letter addressed to the special agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family, from which complainant is descended.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo.; and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas relates to the treaty of March 6, 1865 (14 Stats. 667) which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned to members of the tribe including their half or mixed blood relatives now residing with them.

I find in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections.

1429 Said schedule was duly certified by the agent of the tribe under date December 30, 1870, approved by the superintendent of Indian affairs, and having been submitted to the department by this office January 26, 1871.

Neither the name of Antoine Barada (the father) nor that of the applicant Celestia Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not — all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

1430 In order that the department may further understand the views entertained by this office relative to the mixed blood Omahas not admitted to the reservation by consent of the tribe, and not residing with the tribe at the date of the treaty of March 6, 1865, we refer to the case of Mrs. Euphrasia Peters, the mother of complainant, and the action of the department thereon.

The last mentioned case was reported to the department by Miss Fletcher, under date of July 28, 1883, as a test case. The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas. Antoine married a French woman and his children were born and reared in St. Louis. Euphrasia some 25 years ago married Mr. Peters, a white man, by whom she had several children.

All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged.

After the passage of the bill approved August 7, 1882, at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here. Mr. Peters is a carpenter, and did service in St. Louis and on the Mississippi river for the Government during the war. He has excellent credentials as to character, and so has his wife.

Article 4 of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article therefore, excludes all of the class of Euphrasia
1431 Peters from sharing in the present division of the land; moreover, the Indians through their councilman incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

It was urged that there would not be land enough for all the new comers, and for the members of the tribe living there.

This objection is a serious one, and I know it to be well taken by many persons' field observation. The Omahas cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that the decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were borne upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and others descendants of his father Michael Barada, to-wit: William Barada, Frank Peters, Walter Peters, Luke Sailors and others including this plaintiff, persisted in remaining intruders upon the Omaha reservation against
1432 the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and transmitted to the Interior Department, to-wit:

"OMAHA AGENCY, NEBRASKA, *March* 19, 1888.

Hon. Commissioner of Indian Affairs.

SIR: Our interview with you in Washington was so short, we could not tell you all about intruders on our tribal lands. There is a man named Frank Peters, who although he has Indian blood in him, is not entitled to land on our reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha reservation, and who were excluded by us in our treaty of 1865, from taking land on this reservation.

Our land was allotted and patented to us under the rules of this treaty, we were told. We know that this Peters family tried to take land when our reservation was allotted to us four years ago; that they had a chance to state their case; that the tribe told their side;

that the case was sent on to Washington; that it was decided according to our treaty and the Peters family had to go away.

They have been threatening to come back ever since; last year Frank Peters came back, selected land in township 24, range 8 and broke 40 acres. We told him to stop and go away. He laughed at us and said that he would not go until the Government came and took him off. We have asked to have him sent away, but nothing has been done.

This winter other members of the family and their relations have come up and they say if Frank Peters stays, they will break land and stay here too. We have asked people who know the law, what we should do to save our land.

1433 We were told to tell you all about the case, and that you will get the courts to take the intruders off our land.

The law under which our land is allotted says; that the Government will hold the land safe for us twenty-five years and that the land patented to the tribe, shall be held just as safe as our individual land.

If this man Peters or any other person, is permitted to settle on tribal land, and the Government does not, by its law, take the man away, we cannot feel sure that our own lands will be kept safe, for the promise is the same for our individual and tribal land. The law says that our children born during the 25 years, shall have their allotments on the tribal land. These intruders have selected some of the best of our unallotted lands.

Some of the tribe did not listen to good advice when our reservation was allotted.

They thought they could not live away from the timber out on prairie; but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there; but these intruders are keeping us off of the good land.

We respectfully ask that you take action to remove all intruders from our tribal land.

Frank Peters will soon put in his crop, and we do not want him to be allowed to do so.

If this man is permitted to stay, a hundred others will make the same claim and we will be defrauded of our property."

And the Commissioner of Indian Affairs acting upon the said petition and protest, did under date of November 14, 1888 make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterwards

1434 on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claims under similar state of facts, including the said complainant from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6, 1865, (14 Statutes 668) was made. (The — article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the
1435 allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none bit members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority and contrary, to the wishes of the Omaha Indians you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the O naha Indian reservation.

7. These defendants further aver, that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada Luke Sailors and complainant, failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto, were reported by the United States Indian agent to the Com-
1436 missioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including complainant, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon complainant, Walter Peters, William Barada, Luke Sailors and Frank Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force.

On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and which recommendation requested *that* the Hon. Secretary of War to cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Frank Peters, Luke Sailors and Walter Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included complainant as she was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors and their families, belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7,
1437 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

8. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-oga, John Springer, Nebraska, and twelve hundred others being

members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

9. These defendants for further answer avers that under article 10, of the treaty of July 15, 1830 (7 U. S. Statutes at Large, 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a
1438 patent was issued to complainant's ancestor for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of the ancestor and his descendants including complainant, were exhausted and extinguished as claimants, to membership in the Omaha tribe of Indians and to any further or other allotment of land.

10. These defendants further aver that the preference right to select lands for allotment under the act of Congress August 7, 1882, (22 U. S. Statutes at Large 342) is confined by section 5, of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the treaty with the Omahas concluding March 6, 1865, and Barada and Peters families had not received and were not entitled to receive an assignment and certificate for lands under said treaty and by reason whereof, the said Barada and Peters families did not have and could not acquire any such interest in the lands described in the amended petition as would give them a preference over other Indians in the selection of land for allotment.

11. And these defendants for further answer say, that the complainant was not and is not the head of a family, and is not entitled to claim by way of allotment, the 160 acres of land described in the amended bill of complaint, but her right to allotment, if any she had, would be limited under the law to 80 acres of land.

12. These defendants for further answer aver, that the complainant did not select for allotment, and did not occupy or make any improvements on any of the lands described in the amended bill of complaint and the defendants further aver that the complaint never lived upon the Omaha reservation until after the act of 1893, and never selected, improved or cultivated any land whatsoever, upon the Omaha Indian reservation and is not entitled to have or
1439 select any lands upon the Omaha Indian reservation for allotment.

13. These defendants further aver that the United States allotting agent appointed by the Interior Department to investigate selections and to make allotments of land, investigated, ascertained, and found as a fact that the complainant was not entitled to an allotment of any of the lands claimed by her, for herself or her said children, and reported his said findings to the Interior Department, and which said findings and report have been approved by the Interior Department.

That said United States allotting agent did find upon investigation that claims for allotment of the lands in the complainant's amended bill of complaint described, has been made by other persons, and selections of said lands for allotment had been made in behalf of other persons as follows, to-wit: John McCauley the W. ½ of the S. W. ¼ of section 17; Poncansan Lyon the S. W. ¼ of the S. E. ¼ and the S. E. ¼ of the S. W. ¼ of section 17; Hoodata Lyon the E. ½ of the S. E. ¼ of section 17; Fannie Springer the W. ½ of the N. E. ¼ of section 20; Philip Blackbird the N. ½ of the N. W. ¼ of section 20; Nedawe Walker the N. E. ¼ of the N. E. ¼ of section 20 all in township 25, range 7 east. And the said United States allotting agent did find and ascertain that said parties respectively had a superior right to and claim for allotment of said lands respectively; and the said United States allotting agent did make to said parties respectively an allotment of said lands, and thereafter his official report to the Commissioner of Indian Affairs; that the said parties were entitled to the land allotted to them as above described and which said allotments was subsequently approved by the Commissioner of Indian Affairs, and by the Secretary of the In-
1440 terior, and patents therefor had been issued to the said allottees under date of April 11, 1900, and which said allotments were made and said patents issued in the regular and due course of business.

And these defendants further aver that the complainant herein did not have any prior or superior or vested right to the lands so patented, and that the said allotments were made and the said patents were issued in conformity to law in all respects.

14. These defendants for further answer aver that Edward Rockwell, the husband of the complainant, is a free born, full blood white man and a citizen of the United States, that said marriage took place at Verdon in Richardson county, State of Nebraska; and that the said Edward Rockwell, and his wife Maggie have ever since continued to live together as husband and wife, and have never lived on the Omaha reservation, but have at all times kept up the habits of civilized life and continued to live in Richardson county, State of Nebraska, until about 10 years ago when they removed to the State of Iowa where they have ever since continued to live; and that said Edward Rockwell was not and is not a member of the Omaha tribe of Indians, and that the children of the complainant took the status of their father and were and are white persons and citizens of the United States, and were not and never have been

members of the Omaha tribe of Indians, and were not entitled to selections either in their own right, or by the complainant in their own behalf.

And these defendants further aver that the pretended claim and selections of lands in the name of the complainant was not done and made by the co nplainant, but by Thomas L. Sloan in his
1441 own interest and without knowledge of or authority from the complainant.

15. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of these defendants, and these defendants deny that the complainant is entitled to the relief or any part thereof in the said complainant demanded.

W. S. SUMMERS,
U. S. Attorney.

JNO. L. WEBSTER, *Of Counsel.*

Endorsed: Filed Sep. 21 1901 Geo. H. Thummel, clerk.

1442 Thereupon afterwards, to-wit: on the 21st day of August 1902, stipulation of evidence was filed in said case, which said stipulation is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MAGGIE E. ROCKWELL, Complainant, *vs.* THE UNITED STATES OF AMERICA, John McCauley, Poncansan Lyon, Hoodate Lyon, Fanny Springer, and Phillip Blackbird, Minors, by Their Next Friend, Nedawe Walker, and Chas. P. Mathewson, Defendants.	Doc. T, No. 509. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the complainant, to the facts set down after the names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition of the respective parties to the said facts had been formerly taken.

Thomas L. Sloan, will testify that he surveyed for the Rockwells, the land claimed by Maggie E. Rockwell for herself and her children, as described in the pleadings, and that he, Thomas L. Sloan, planted 10 bushels of butternuts on the said land, and the land was plowed around in the spring of 1891; that Walter Peters did the

plowing for the Rockwells. He will further testify that the Rockwells first elected the land in the year 1881, but they have never occupied or improved further than the breaking of 6 or 8 furrows around it, and the planting of butternuts thereon; that the
1443 butternuts were tramped out by the cattle and none are growing; that the persons to whom the said lands have been allotted and patents issued, selected the said lands for allotment in the year 1893.

That the land was leased by the agent for five years to Rosalie Farley and the rent paid to the agent and disbursed to the tribe. That the lease expired March 1st, 1901, since which time lease- have been made by the patentees under the act of March 3, 1893.

JNO. L. WEBSTER,
Att'y for Defendants.
THOMAS L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

1444 Thereupon afterwards, to-wit: on the 22nd day of September 1902 replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

MAGGIE E. ROCKWELL
v.
UNITED STATES OF AMERICA ET AL. } No. 509, Doc. T.

The Replication of Maggie E. Rockwell, Plaintiff, to the Answer of United States of America et al., Defendants.

This replicant saving and reserving to herself all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendants for replication thereunto saith *and* she doth and will aver, maintain and prove her said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material, or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this rep-

licant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

1445 Thereupon afterwards to-wit: at the May 1902 term of said court and on the 8th day of November, 1902, the following decree was signed and filed in said case, and entered of record on the journal of proceedings of said court, had on said day, to-wit:

MAGGIE E. ROCKWELL, Complainant,
vs.
THE UNITED STATES OF AMERICA, JOHN McCauley, Poncansen Lyon, Hoodata Lyon, Fanny Springer, and Phillip Blackbird, Minors, by Their Next Friend, Nedawe Walker, and Chas. P. Mathewson, Defendants.
Doc. T, No. 509. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant.

It is therefore, ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved and the suit be and is hereby dismissed at the costs of the complainant taxes at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

1446 Thereupon afterwards, to-wit: on the 13th day of October 1903, assignment of errors, was filed in said case, which said assignment is in words and figures following, to-wit:

1447 In the Circuit Court of the United States for the District of Nebraska.

MAGGIE ROCKWELL, Complainant, *vs.* THE UNITED STATES OF AMERICA, JOHN McCauley, Poncansan Lyon, Hoodata Lyon, Fanny Springer, Philip Blackbird, Nedawe Walker, and Charles P. Mathewson, Defendants.	Docket T, No. 509. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such times, erroneously hold- that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

1448 Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Maggie E. Rockwell and her children *was* not entitled to claim and have allotted to them the land described in plaintiff's bill of com-

plaint, to-wit: The south half of the southeast quarter of section seventeen (17); the north half of the northeast quarter of section twenty (20); the south half of the south west quarter of section seventeen (17) and the north half of the northwest quarter of section twenty (20), all in township twenty-five (25) north of range seven (7) east of the 6th P. M.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

MAGGIE E. ROCKWELL,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1449 Thereupon afterwards, to-wit: on said 13th day of October, 1903, petition for appeal was filed in said case, which said petition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MAGGIE E. ROCKWELL, Complainant, *vs.* THE UNITED STATES OF AMERICA, JOHN McCauley, Poncansan Lyon, Hoodata Lyon, Fanny Springer, Phillip Blackbird, Nedawe Walker, and Charles P. Mathewson, Defendants.	Docket "T," No. —. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives herself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors com-

plained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States, and that a transcript of the record and *proceedings, duly authenticated may be* sent to said court.

1450 MAGGIE E. ROCKWELL,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
Her Attorneys.

And now on this 13th day of October 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903, Geo. H. Thummel, clerk.

Thereupon afterwards, to-wit: on said 13th day of October 1903, a bond was filed in said case, which said bond is in words and figures following, to-wit:

1451 509, T.

Know all men by these presents, that we, Maggie E. Rockwell and John G. Gannon are held and firmly bound unto The United States of America, Hodata Lyon, Poncasan Lyon, John McCauley, Phillip Blackbird, Fanny Springer & Nedawe Walker in the full and just sum of one hundred dollars, to be paid to the said The United States of America, Hodata Lyon, Poncasan Lyon, John McCauley, Phillip Blackbird, Fanny Springer, Nedawe Walker heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Maggie E Rockwell plaintiff and The United States of America, Hodata Lyon, Poncasan Lyon, John McCauley, Phillip Blackbird, Fanny Springer and Nedawe Walker defendant- decree was rendered against the said Maggie E. Rockwell and the said Maggie E. Rockwell has obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The United States of America, Hodata Lyon, Poncasan Lyon, John McCauley, Phillip Blackbird, Fanny Springer Nedawe Walker citing and admonishing them to be and appear in

the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Maggie E. Rockwell shall prosecute said appeal to effect, and answer all costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

MAGGIE E. ROCKWELL [SEAL.]
JOHN G. GANNON. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1452 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1453 The United States of America to the United States of America, John McCauley, Pocansan Lyon, Hoodata Lyon, Fannie Springer, Phillip Blackbird, Nedawe Walker, and Charles P. Mathewson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Maggie E. Rockwell is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska. this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #1993 No. 509 United States circuit court, district of Nebraska. Maggie E. Rockwell *vs.* United States, *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

1453a Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, John McCauley Pocansan Lyons, Hoodata Lyons, Fanny Springer, Philip Blackbird, Nedawe Walker, and Charles P. Mathewson, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney, personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1453b UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908.}

SUSAN M. BONNEVIER,
Notary Public.

1454 Thereupon afterwards, to-wit: on the 10 day of May, 1901, amended bill of complaint was filed in said case, which said amended bill of complaint is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, Complainant,
vs.
THE UNITED STATES OF AMERICA, George Fields, Joseph Fields, Minors, and Charles P. Mathewson, Defendants.

No. 574, Doc. T.
Amended Bill of Complaint.

To the honorable the judges of the United States circuit court for the district of Nebraska:

Your orator brings this his bill of complaint and says that he is of what is known as a mixed blood of the Omaha tribe of Indians, and is a lineal descendant of Lata-da-we-, who was an Indian woman of the full blood and a member of the Omaha tribe of Indians. That Lata-da-we intermarried with one Francis Bono and that they maintained tribal relations with the Omaha tribe and maintained their domicile upon the Omaha reservation and maintained tribal relations there with so long and so far as any tribal relation- have been maintained by said tribe, and Lata-da-we participated in the property and other rights of said tribe, and has been recognized by said tribe and the members thereof as a member of said tribe and entitled to all its rights and privileges.

Further complaining your orator says that on the 16th day of March, A. D., 1854 a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America
1455 wherein and whereby the tribe ceded to the United States certain lands in lieu whereof it received its present reservation and certain sums of money paid *pro rata* to the individual members of the tribe including Lata-da-we and her children. All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in United States — at Large vol. 10, page 1043, to which for greater certainty your orator refers.

And your orator further shows that on the 6th day of March A. D., 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half *half* and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large vol. 14, page 667, to which for greater certainty your orator begs to refer.

And further showing your orator says that on the 7th day of August A. D., 1882, an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha

reservation either through the agent of said tribe or such other persons as he might designate in severalty to the Indians of said tribe.

To each head of a family one-quarter of a section, to each person over eighteen years of age one-eight- of a section to each orphan child one-eighth of a section, and to each other person under eighteen years of age one sixteenth of a section. That all allotments should be selected by the Indians, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22,
1456 page 431, to which for greater certainty your orator refers.

Your orator further says that the said tribe gave their consent to the operation of said act of Congress and that allotments were made under the provisions of said act in December 1884, and at subsequent times since.

Your orator further says that on the 3rd day of March A. D. 1893, an act of Congress was passed amending or extending the act of August 7th, 1882 providing that with the consent of the Omaha tribe of Indians expressed in open council further allotment should be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3rd, 1893 but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

That consent of the Omaha tribe was given in open council May 1899 and immediately thereafter assignments for allotments were made by a special agent under the direction of the Commissioner of Indian Affairs; that the instructions of said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed; that said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimants.

And your orator further shows that his mother, Mary Monette was the child of Francis Bono and Lata-da-we, who was as hereinabove set forth, an Omaha Indian woman and a member of said tribe. That Mary Monette lived among the Omaha Indians a number of years prior to her death and was recognized by them as one of their own blood. That she removed to the present reservation upon receipt of a letter from the special allotting agent
1457 in which she was notified that the tribal council had requested that she, Mary Monette, and her family be allotted land with other members of the tribe, which notice was sent to her through a special messenger but was not received until after the work of allotting the lands had been completed. That as soon as the notice was received Mary Monette and her family removed to the Omaha reservation and selected land; that your orator Mitchell Monette, selected for himself as the head of a family 160 acres of land described as follows:

The west ¼ of the N. W. ¼ of sec. 13, and the E. ½ of the N. E. ¼ of section 14, and for his oldest son Earl Monette, the E. ½ of the N. E. ¼ of section 13, and for his son Victor A. Monette the S. ½ of the N. E. ¼ of section 24, all in township 25 N. range 6 east of the 6th P. M. in Nebraska. Your orator has been refused an allotment by the Interior Department.

That the said described land is a part of the lands referred to in the treaties and act of Congress hereinabove referred to. That no person or persons claimed the land when first selected and marked for your orator in accordance with the laws relating thereto. That your orator is in possession of said lands and has made valuable improvements thereon. That your orator is a member of said Omaha tribe of Indians by blood and descent and also in accordance with the custom, rules and regulations of said tribe and said relationship and membership has never been terminated. That under provisions of the act of Congress of March 3rd, 1893, new and additional allotments of land have been made to members of the Omaha tribe and during the pendency of this suit assignments of the land have been made to the following named persons:

To George Fields, allottel under the act of Aug. 7th, 1882, the S. E. ¼ of N. E. ¼ of section 24, township 25, N. range 6 east,
1458 and to Joseph Fields S. W. ¼ of N. E. ¼ of section 24, township 25 north, range 6, east. Both the said George Fields and the said Joseph Fields are minor sons of Josiah Fields. That no rights were acquired by these parties to said lands assigned to them but owing to such assignments and alleged claim thereunder they are necessary parties to the suit.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold allotments of land to place in possession the allottee or lessee, and that he threatens to place into possession either the allottees hereinbefore named or the lessees to the great and irreparable damage of the complainant who is now in possession. That because of the position of said Charles P. Mathewson, his claim of authority over the land in controversy and his threats that he will remove your orator from the land make him a necessary party to this suit.

And your orator further shows to your honors that by an act of Congress approved the 15th day of August 1894, it was provided that all persons who are in whole or in part of Indian blood or descent, who are entitled to allotments of land under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress, may commence, prosecute or defend an action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction involving the right of any person in whole or

in part of Indian blood or descent, to any allotment of land under any law or treaty. The said act further provided that a
1459 judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305, which act has been amended by re-enactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator begs to refer.

Your orator further states that the defendant The United States of America claims that by virtue of the 4th art., of the treaty of March 6th, 1865, the assignment to be made in limited quantities from the lands held by the said tribe in common to the individual members thereof was confined to the members thereof of full blood "including their half breed and mixed blood relatives now residing with them." The defendant The United States, claims that your orator and his ancestors were not residing on the reservation at that time and therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882. Your orator admits that he and his ancestors were temporarily absent from the reservation at the time, but claims that such absence did not deprive them of the right of residence on the reservation and the rights of allotment under the treaty of March 6th, 1865, or their rights to allotment under the act of Congress of August 7th, 1882.

That it was not so considered by the tribe nor the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art., of the treaty of March 6th,
1460 1865, as certified to by the chiefs and headmen of the tribe of Indians and the United States Indian agent on the 30th day of December, 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1870, and approved by the Secreyary of the Interior January 26th, 1871, contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the reservation at the time of the treaty of March 6th, 1865, nor at the time of making the schedule referred to that under the provisions of the act of August 7th, 1882, many half breeds and mixed blood relatives of the Omaha tribe received allotments under the provisions of the act of August 7th, 1882 who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870 nor at the time of approval of the schedule by the chiefs, the agents, — the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose names did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation, but who at

all times and at the time of the treaty of March 6th, 1865, and ever since resided away from the reservation.

Your orator further states that no new rights were acquired under the treaty of March, 1865, but that the assignment provided for in the 4th art., of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your orator further states that the defendant, The United States, claims that the complainant or his ancestors have received allotments of land under and by virtue of a treaty of July 15th,
1461 1830, and 10th art., thereof and by the acceptance of said allotments under the policy of the Indian Office your orator is not entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your orator admits that his ancestor received an allotment of land under the provisions of the 10th art. of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians, that the quantity so assigned was one-half of the amount provided by said treaty and that the said allotment was not accepted by his ancestor nor given to his ancestor in consideration of the relinquishment of any other right- than those to which she was entitled on the Nemaha reservation.

Numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art., of the treaty of July 30th, 1830, sums of money, which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provision of the act of Congress section 6th, ch. 66 of the third session of the 33rd Congress 1859. That most of the half breeds who received allotments on the Nemaha reservation and those who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th, 1882; that your orator has not in any manner assigned or relinquished his right or claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians — has the United States by the executive department of the Government or by the enactment of any law authorized your orator or his ancestors, or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of this tribe has been accepted or approved of by
1462 the United States or by any of its officers.

Wherefore your orator shows to your honors that he is without a remedy at law and remediless in the premises unless relieved by your honors in this court of equity, and he therefore prays the aid of the court in the premises and that said defendants, The United States of America, George Fields, Joseph Fields, by

their next friend, Josiah Fields, and Charles P. Mathewson may answer your orator's bill but without oath, answer under oath being expressly waived. That the patents issued to George Fields and Joseph Fields be ordered and decreed null and void, and that the selections as made by your orator for himself or his sons be decreed the allotment of your orator and his sons respectively and superior to the pretended claim of George Fields and Joseph Fields, and that your orator and his sons and their heirs be decreed entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orator further prays for a preliminary order of injunction against the defendants George Fields, Joseph Fields and Charles P. Mathewson enjoining and restraining each of them, their agents and employés from in any manner interfering with the possession of the land herein described and that at the termination of this suit that said injunction be made perpetual and for such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court directed to the United States of America, George Fields, Joseph Fields, by their next friend, Josiah Fields, and Charles P.
1463 Mathewson therein and thereby commanding them on a day certain and under a certain penalty therein to be limited, personally to be and appear before this court, then and there to answer all and singular the premises and to stand and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed May 10 1901 Geo. H. Thummel, clerk.

1464 Thereupon afterwards, to-wit:—on the 21st day of September 1901, an answer was filed in said case, which said answer is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, Complainant, *vs.* THE UNITED STATES OF AMERICA, George Fields, Joseph Fields, Minors, and Charles P. Mathewson, Defendants.	No. 574, Doc. T. Answer to Amended Bill of Complaint.

The answer of The United States of America, George Fields, Joseph Fields, minors, and Charles P. Mathewson, defendants, to the amended bill of complaint of Mitchell Monette, complainant.

These defendants now and at all times hereafter saving and reserving unto themselves respectively all benefit and advantages of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said amended bill of complaint contained, for their joint and several answer thereto, and unto so much and — parts thereof as these defendants are advised is or are material or necessary for them to make answer unto these defendants for their joint and several answer say:

1. These defendants deny that Mary Monette, the mother of the complainant is or ever was a member of the Omaha tribe of Indians of Nebraska; and deny that the complainant or his ancestors ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska; and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the United States as members of the Omaha tribe of Indians.

1465 These defendants for further answer aver that the complainant claim to be a descendant of Mary Monette, and that the said Mary Monette was the daughter of Latadawe, who had intermarried with one Francis Bono, and the defendant- avers that the said Francis Bono was a free born white man and a citizen of the United States, and that the said Mary Monette (*née* Bono) took the status of her father, and thereby became and was a white person and citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; and that the said Mary Monette lived with her parents in Richardson county, State of Nebraska, and in that vicinity, but not on the Omaha reservation up until the year — when she intermarried with one —— Monette, who was a free born white man and citizen of the United States.

That there *was* born of the said —— Monette and his wife Mary Monette, the following children; Mitchell Monette, David Monette, Jennie M. Arnold, *née* Monette, Cassie M. Karch, *née* Monette, and which children, in law and in accordance with the rulings of the

Interior Department in its government and control of Indian affairs, took the status of their father, and thereby became and were white persons and citizens of the United States and were not and never became members of the Omaha tribe of Indians; and that the said parents together with their said children, continued to live in Richardson county, State of Nebraska, and in that vicinity until after the approval of the act of Congress, August 7, 1882; and that the said Mary Monette came to the Omaha reservation about the year 1892, with the hope and expectation of obtaining an allotment of land under said act as hereinafter more particularly set forth.

2. These defendants for further answer aver that the com-
1466 plainant and his ancestors, did not live with the Omaha tribe of Indians on the reservation at the time of the treaty of 1865, or the approval of the act of Congress — 1882; that by the terms of article 4, of the treaty of 1865, (14 U. S. Statutes at Large, 667) the assignment of lands in severalty included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded the Monette family, being only mixed Indian blood, and not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882, (22 U. S. Statutes at Large p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said Monette family was not residing on the Omaha Indian reservation and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians, co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty and giving the names of the persons entitled to allotments and selections of land, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians and by the Indian agent of the Omaha tribe of Indians, and transmitted and submitted to
1467 the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of the Monette family or their ancestors, and which said schedule when so approved by the Interior Department became and was a judgment by the Interior Department, that neither the Monette family the complainant nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say, that after the act of Congress of August 7, 1882 (22 U. S. Stats. at Large p. 341) the said Monette family and other half-breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands; and these defendants deny that the tribal council of the Omaha Indians ever requested that lands be allotted to the Monette family; and deny that the Monette family were requested by letter or otherwise, from the United States allotting agent, to come to the reservation, but to the contrary aver that the first allotment of lands under the act of 1882, was completed in the year 1884; and that the Monette family did not come to the vicinity of the Omaha reservation until the year 1892.

That the Omaha Indians on the said reservation manifested the most determined opposition to the Monette family, and other mixed blood Indians of that class, being allowed to participate in the distribution of the land, and from time to time individual cases were reported to the department by the special agent, charged with the work of allotting the lands for decision, as to the right of the parties to receive allotment.

1468 4. As showing the position taken by the Interior Department in deciding the cases of the absentee mixed bloods, the following is taken from the ruling of the department dated September 13, 1883, relating to Celestine B. Kuhn, a member of the Barada family, the members of which family are similarly situated to the complainant herein, and have like suits pending, claiming the right to allotments of lands.

"It appears that the applicant is one of 7 living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother, French, in St. Louis, Mo., and has lived all her life away from the Omahas, until last spring when she appeared on the reservation with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which allotments are being made to the Omahas relates to the treaty of March 6, 1865, (14 Statutes. 667) which should be taken as a guide in determining as to who are entitled to allotments.

'The treaty provides that lands in severalty shall be assigned to members of the tribe including their half or mixed blood relatives now residing with them.'

I find, in the files of this office a schedule, duly certified by the chiefs of the Omaha tribes, showing the names of those who were entitled to selection of land in severalty under the treaty aforesaid, and a description of their respective selections.

Said schedule was duly certified by the agent of the tribe under date of December 30, 1870, approved by the superintendent of Indian

affairs, and having been submitted to the department by this office January 26, 1871.

1469 Neither the name of Antoine Barada (the father) nor that of the applicant Celestine Kuhn (formerly Barada) appears on said schedule, and it is proper to conclude therefore that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant were not entitled to an allotment then, and it is clear that she was not deemed to be, she certainly is not entitled now, having — in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or more recent act of Congress under which the allotments are being made was intended as a general invitation to all persons, everywhere, who by hook or crook might be able to prove the existence of a drop or more of Omaha blood in their veins, to come forward and receive an allotment.

Manifestly such was not the intention, for it is not at all likely that there would be land enough in the entire reservation to go around that way.

Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians. Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation."

H. PRICE,
Commissioner.

1470 The department also made like ruling in the case of Euphrasia Peters, another of the mixed blood claimants of like class. The last mentioned case was reported to the department by A. C. Fletcher, special U. S. Indian agent, under date of July 28, 1883, as a test case. The case was stated as follows:

"Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas. Antoine married a French woman and his children were born and reared at St. Louis. Euphrasia some 25 years ago married Mr. Peters, a white man by whom she had several children. All of the Barada family took land in the half-breed Nemaha reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged. After the passage of the bill approved August 7, 1882 at the instance of her sister Mrs. Provost, Mrs. Peters came up to the Omaha reserve to establish her relationship and claim land here. Mr. Peters is a carpenter, and did service in St. Louis

and on the Mississippi river for the Government during the war. He has excellent credentials as to character, and so has his wife.

Article 4 of the treaty of 1865, defines those entitled to lands to be "the members of the tribe including their half-breed or mixed blood relations now residing with them."

This article, therefore, excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians through their councilmen incline to insist upon a strict construction of this article 4.

Since my arrival, a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the council and the people was unanimous that mixed bloods be not allowed to take land under the present act.

1471 It was urged that there would not be land enough for all the new comers, and for members of the tribe living there. This objection is a serious one, and I know it to be well taken by many persons' field observation. The Omaha- cannot afford to give these outsiders of their best lands."

Miss Fletcher subsequently decided that Mrs. Euphrasia Peters was not entitled to an allotment on the Omaha reservation and by letter of August 9, 1883, she was advised that her decision was approved by the department.

From the foregoing it will be observed that under the construction placed upon the act of August 7, 1882, none but members of the tribe and their half or mixed blood relatives residing with them at the date of their treaty of 1865, whose names were born- upon the duly certified census roll of 1871, or their descendant-, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

6. These defendants for further answer aver that notwithstanding the ruling of the Department of the Interior above set forth, many half-breed and mixed blood Indians insisted in coming and remaining on the lands of the reservation, and as a result thereof, the members of the Omaha tribe of Indians caused a petition to be prepared and transmitted to the Interior Department under date of March 19, 1888, in which they protested against the absentee half and mixed blood Indians coming upon the reservation and claiming the right to an allotment of lands, and requested the Interior Department to take action to remove all intruders from the lands of the reservation.

1472 That the Commissioner of Indian Affairs acting on the said petition and protest, did, under date of November 14, 1888, make his report to the Secretary of the Interior and requested authority to remove said mixed blood claimants from the said reservation, and that afterward on the 5th day of December, 1888, the Secretary of the Interior directed the removal of the said mixed blood claimants from the said reservation, and which said order and judgment is as follows:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation; that he was not residing with the Omahas when the treaty of March 6th 1865 (14 Statutes 668) was made. (The article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871. Submitted by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 1473 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are born- upon the duly certified census roll of 1871, or their descendants, and such others who may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,
(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

112—453

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha Indian reservation.

6. These defendants for further answer avers that under article 10, of the treaty of July 15, 1830, (7 U. S. Statutes at Large,
1474 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to complainant's ancestor for three hundred and twenty acres of land on the so called Nemaha reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of the ancestor and his descendants including complainant, were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

7. These defendants further aver that the preference right to select lands for allotment under the act of Congress, August 7, 1882, (22 U. S. Statutes at Large, 342) is confined by section (5) of said act to persons who had received or were entitled to receive an assignment and certificate of an allotment under the 4th article of the treaty with the Omahas concluding March 6, 1865, and Monette family had not received and were not entitled to receive an assignment and certificate for lands under said treaty, and by reason whereof, the said Monette family did not have and could not acquire any such interest in the lands described in the amended petition as would give them a preference over other Indians in the selection of land for allotment.

8. And these defendants for further answer say, that the complainant was not and is not the head of a family, and is not entitled to claim by way of allotment, the 160 acres of land described in the amended bill of complaint, but her right to allotment, if any she had, would be limited under the law to 80 acres of land.

9. These defendants for further answer aver that the complainant never lived upon the Omaha reservation until after the act of 1893, and never selected, improved, or cultivated any land what-
1475 soever, upon the Omaha Indian reservation, and is not entitled to have or select any lands upon the Omaha Indian reservation for allotment.

10. That the said allotting agent did find upon investigation that the said complainant did not and never had selected, occupied or improved the E. ½ of the N. E. ¼ of section 13, for his son Earl A. Monette; and these defendants aver that the N. E. ¼ of said section 13, had been allotted in 1883 to Me-man-she-hane, and the said United States allotting agent further found that the said complainant had never selected, occupied or improved the S. ½ of the N. E. ¼ of said section 24, in township 25, range 6, east for his son Victor A. Monette, and the said United States allotting agert further found that the said S. ½ of the N. E. ¼ of said section 24, had been claimed for allotment by Joseph Fields, and George Fields, and the said United States allotting agent did make an allotment of the said last above described land to the said Joseph Fields

and George Fields, and thereafter made his official report to the Commissioner of Indian Affairs of said allotment above described and which said allotment was subsequently approved by the Commissioner of Indian Affairs and by the Secretary of the Interior and patents therefor had been issued to the said allottees, under date of April 11, 1900, and which said allotments were made and said patents issued in the regular and due course of business.

These defendants further aver that the complainant herein did not have any prior or separate or vested right to the lands so patented to the said allottees respectively, and that the said allotments to them, and the said patents to them, were made in all respects in conformity to law.

These defendants further aver that the land at present occupied by the complainant is in the N. W. ¼ of section 13, township 25, range 6 east, and which land has been reserved for the claimant pending this litigation, and as a part of the land described in
1476 the next paragraph of this answer.

11. And these defendants further aver that the United States allotting agent reserved for the Monette family, pending this litigation and subject to the result thereof, the following land, to-wit: The N. E. ¼ of section 13, township 25, north of range 6 east; the E. ½ of the N. E. ¼ of section 14, township 25, north of range — east; the S. ½ of the S. W. ¼ of section 12, township 25, north of range 6 east; the S. E. ¼ of section 10; the N. E. ¼ of section 15, the N. ½ of the S. E. ¼ of section 14, the N. W. ¼ of the S. W. ¼ of section 11, the E. ½ of the S. W. ¼ of section 10, the N. W. ¼ of the S. W. ¼ of section 10, and the S. W. ¼ of the N. W. ¼ of section 10, and the S. E. ¼ of the N. W. ¼ of section 10, and the S. E. ¼ of the N. E. ¼ of section 9, all in township 25, north of range 5 east, and which said reservation has been noted upon the maps in the office of the Commissioner of Indian Affairs.

12. And these defendants say that if there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, — is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complaint demanded.

W. S. SUMMERS, *U. S. Att'y.*

JNO. L. WEBSTER,
Special Counsel.

Endorsed: Filed Sep. 21 1901 Geo. H. Thummel, clerk.

1477 Thereupon afterwards, to-wit: on the 21st day of August, 1902, stipulation of facts was filed in said case, which said stipulation is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, Complainant,
vs.
THE UNITED STATES OF AMERICA, GEORGE Fields, Joseph Fields, Minors, and Charles P. Mathewson, Defendants. } No. 574, Doc. T.

Mitchell Monette, the complainant, will testify that he was born in 1868 and married in 1890, and came to the Omaha Indian reservation in 1891 and has resided there ever since.

That he has children as follows: Eerl Monette born Sept. 26 1890; Fay Monette born Sept. 8, 1897, Victor Monette born Jan. 16, 1892, Myrle Monette born Mar. 8 1900, Floyd Monette born Jan. 14, 1893.

He makes claim to the S. ½ of the N. E. ¼ of section 24, township 25, range 6 (being the land allotted to Joseph Fields and George Fields) The said Joseph Fields and George Fields had each received a 40 acre allotment, to-wit: Joseph in sec. 25, T. 25, R. 6, under act of 1893, and George in sec. 23, T. 25, R. 6, under act of 1882.

He will testify that in the year 1892 he plowed around 240 acres including land in controversy and all of the N. E. ¼ of section 24, and the N. ½ of the S. E. ¼ of section 24, and broke 10 acres on the E. side of the lands so plowed around.

1478 Mitchell Monette will further testify that he lives on the N. W. ¼ of the N. W. ¼ of section 13, township 25, range 6 (being a part of the land reserved for the Monette family). That the N. E. ¼ of sec. 13 was allotted to Me-man-she-hane, and the N. ½ of the N. E. ¼ sec. 24 to Job Springer in 1898, and that Josiah Fields claimed that his plowing and marking also included said lands.

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, Complainant,
vs.
THE UNITED STATES OF AMERICA, George Fields, Joseph Fields, Minors, and Charles P. Mathewson, Defendants. } No. 574, Doc. T. Stipulation of Facts.

It is hereby stipulated that the following named persons will testify in behalf of the defendants to the facts set down after the- names respectively, and it is hereby further stipulated and agreed that said statements may be received in evidence with like force and ef-

fect, as if the deposition of the respective parties to the said facts had been formerly taken.

Josiah Fields will testify that he is the father of George Fields and Joseph Fields, to whom has been allotted the S. ½ of the N. E. ¼ of section 24, township 25, range 6, which is claimed by Mitchell Monette in his amended bill of complaint.

He will further testify that in the year 1891 he selected the said lands for his sons Joseph and George, and plowed around the same, including all of the N. E. ¼ of said section 24, township 25, range 6, and that he was the first person to plow around that land.

JNO. L. WEBSTER,
Att'y for Defendant.
THOS. L. SLOAN,
Att'y for Complainants.

Endorsed: Filed Aug. 21 1902 Geo. H. Thummel, clerk.

1479 Thereupon afterwards, to-wit: on the 22nd day of September, 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

MITCHELL MONETTE
v.
UNITED STATES OF AMERICA ET AL. } No. 574, Doc. T.

The Replication of Mitchell Monette, Plaintiff, to the Answer of United States of America et al., Defendants.

This replocant, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants for replication thereunto saith, that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this

honorable court shall direct and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1903 Geo. H. Thummel, clerk.

1480 Thereupon afterwards, to-wit: at the May 1902 term of said court, and on the 8th day of November, 1902, the following decree was signed and filed in said case, and entered of record on the journal of proceedings of said court, had on said day, to-wit:

MITCHELL MONETTE, Complainant,
vs.
THE UNITED STATES OF AMERICA, GEORGE Fields, Joseph Fields, Minors, and Chas. P. Mathewson, Defendants.
} Doc. T, No. 574. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant. It is therefore

Ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

1481 Thereupon afterwards, to-wit: on the 13th day of October 1903, assignment of errors was filed in said case, which said assignment is in words and figures following, to-wit:

1482 In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant.
} Docket T, No. 574. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter

to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Second. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously hold- that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Third. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Fourth. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

1483 Fifth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Sixth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Seventh. The court erred in holding and determining that Mitchell Monette and his children were not entitled to claim and have allotted to them the land described in plaintiff's bill of complaint, to-wit: The east half of the northeast quarter of section fourteen (14); the northwest quarter of section thirteen (13), and the south half of the northeast quarter of section twenty-four (24), all in township twenty-five (25), north of range six (6) east of the sixth principal meridian.

Eighth. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Ninth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of complainant.

Wherefore complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

MITCHELL MONETTE,
Complainant,
By CHAS. E. CLAPP &
THOMAS L. SLOAN,
His Attorneys.

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1484 Thereupon afterwards, to-wit: on said 13th day of October, 1903, petition for appeal was filed in said case, which said petition is in words and figures following to-wit:

In the Circuit Court of the United States for the District of Nebraska.

MITCHELL MONETTE, Complainant,
vs.
THE UNITED STATES OF AMERICA, Defendant. } Docket T, No. 574. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an appeal in said cause to the Supreme Court of the United States and that a transcript of the record and proceedings, duly authenticated may be sent to said court.

1485 MITCHELL MONETTE,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

Thereupon afterwards to-wit: on said 13th day of October, 1903, a bond was filed in said case, which said bond is in words and figures following, to-wit:

1486 574, T.

Know all men by these presents, that we, Mitchell Monette John G. Gannon are held and firmly bound unto The United States of America Joseph Fields & George Fields in the full and just sum of one hundred dollars ($100.00) to be paid to the said The United States of America Joseph Fields, George Fields, heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this tenth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between Mitchel- Monette plaintiff and The United States of America. Joseph Feilds George Feilds judgment was rendered against the said Mitchel- Monette and the said Mitchell Monette has obtained an appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, Joseph Feilds George Feilds citing and admonishing *it* to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Mitchell Monette shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

MITCHELL MONETTE. [SEAL.]
JOHN G. GANNON. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1487 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1488 The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Mitchell Monette is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] #1992. No. 574 United States circuit court, district of Nebraska. Mitchell Monette *vs.* United States. Citation. Filed Oct. 27 1903. Geo. H. Thummel, clerk.

1488*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, by handing to and leaving a true and correct copy thereof with John L. Webster its attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903.

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1488*b* UNITED STATES OF AMERICA, } ss:
District of Nebraska, County of Douglas, }

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he received the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leav-

ing with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{ Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908. }

SUSAN M. BONNEVIER,
Notary Public.

1489 Thereupon afterwards, to-wit: on the 10th day of May 1901, amended bill of complaint was filed in said case, which said amended bill is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, Complainant, *vs.* THE UNITED STATES OF AMERICA, Charles P. Mathewson, Megratahe Grant, John Grant, Charles Grant, and Harry Baxter, Defendants.	No. 579, Doc. T. Amended Bill of Complaint.

Comes now the complainant and shows to the honorable court, as follows:

That your orator is a son of Margaret Sloan, deceased, who during her lifetime was a member of the Omaha tribe of Indians in the State of Nebraska. That said Margaret Sloan was the daughter of Michael Barada, or Michael Berda as he was sometimes designated, a white man, and Taegleha Hacienda, an Indian woman of the full blood and a member of the Omaha tribe of Indians. That your orator and said Margaret Sloan and her parents maintained their domicile with said Omaha tribe and were fully recognized as members of said tribe by the United States of America and the members of said tribe and was admitted to and participated in the benefits as other members of said tribe.

Further complaining, your orator says that on the 16th day of March A. D. 1854, a certain treaty was entered into by and between the Omaha tribe of Indians and the United States of America wherein and whereby the tribe ceded to the United States certain land in lieu whereof they received their present reservation and certain sums of money paid *pro rata* to the individual mem-
1490 bers of the tribe including Margaret Sloan and your orator.

All of which matters by said treaty provided and other matters and things more fully appear in said treaty as published in

United States Statutes at Large vol. 10, page 1043, to which for greater certainty your orator refers.

And your orator further shows that on the 6th day of March, A. D. 1865, another treaty was entered into between said parties wherein was a provision for the assignment of the lands of the present reservation in severalty to the Indians of said tribe including their half and mixed blood relatives then residing with them, which with other matters and things more fully appear in said treaty as published in the United States Statutes at Large vol. 14, page 667, to which for greater certainty your orator begs to refer.

And further showing your orator says that on the 7th day of August A. D. 1882, an act was approved providing that with the consent of the Omaha tribe of Indians expressed in open council the Secretary of the Interior should allot certain lands of the Omaha reservation either through the agent of said tribe or such other person as he might designate in severalty to the Indians of said tribe.

To each head of a family one quarter of a section, to each person over eighteen years of age, one eight of a section, to each orphan child one-eight of a section, and to each other person under eighteen years of age one-sixteenth of a section. That allotments should be selected by the Indians, heads of families selecting for their minor children and the agent selecting for each orphan child. All of which matters and things with other matters more fully appear in said act as set forth in the Statutes at Large vol. 22, page 341, to which for greater certainty your orator refers.

1491 Your orator further shows that the said tribe gave its consent to the operation of said act of Congress and that allotments were made under the provisions of said act *of* December, 1884, and at subsequent times since.

That your orator is occupying and farming the N. ½ of N. W. ¼ of section 35, township 25 N. range 7 east of the 6th P. M. in Nebraska, and the N. E. ¼ of N. E. ¼ and the N. E. ¼ of the S. W. ¼ of section 34 township 25 N. range 7 east of the 6th P. M. in Nebraska. That such selection was made as the head of a family and amounted to one hundred and sixty acres, that the land at the time of its selection was raw, unbroken, unimproved and unclaimed land.

Your orator further states that he is a member of the Omaha tribe by blood and descent, by recognition as such by both the tribal and governmental authorities, and according to the customs, rules and regulations of the Omaha tribe of Indians. That such relationship and membership has never been terminated. That application for the allotment of said land has been refused your orator by the Department of the Interior.

That he was further recognized as a member of the tribe by the payment to him of annuity money.

Your orator further states that on the 3rd day of March A. D., 1893, an act of Congress was passed amending or extending the act of August 7th, 1882, providing that with the consent of the Omaha tribe of Indians expressed in open council further allotments should

be made from the residue lands of the Omaha reservation. That the rights and claims under the act of 1882 were not superceded by the act of March 3d, 1893 but increased allotments were provided from the residue after fulfilling the provisions of the act of 1882.

1492 That consent by the Omaha tribe was given in open council May 1899, and immediately thereafter assignments for allotment were made by a special agent under the direction of the Commissioner of Indian Affairs. That the instructions to said special agent directed that he should respect the selections made by the parties who had cases pending in court where such selections were the first made to the lands claimed. That said special agent did not follow his instructions but assigned a part of the land without investigation as to the priority of claim and without notice to the claimants. That the N. W. ¼ of N. W. ¼ of section 35 was assigned to John Grant and the N. E. ¼ of N. W. ¼ of section 35 assigned to Megratahe Grant, N. E. ¼ of N. E. ¼ of section 34 to Charles Grant, and the N. E. ¼ of S. W. ¼ section 34 to Harry Baxter. That trust patents therefor naming the United States as trustee have been issued in the names of the parties dated April 11th, 1900.

That said John Grant and Harry Baxter received an allotment under the act of August 7th, 1882 and the present allotment is additional. That because of the rights or title acquired by these parties to the land in controversy since the filing of this cause they have become necessary parties.

That Charles P. Mathewson is the duly appointed and qualified Indian agent for the Omaha reservation, and as such is charged with the duty under the direction of the Commissioner of Indian Affairs to make leases for the Indians who hold the allotments of land and to place in possession the allottee or lessee, and that he threatens to place into possession either the allottees hereinbefore named or their lessees to the great and irreparable damage of the complainant who is now in possession. That because of the position of said Charles P. Mathewson his claim of authority over the land in controversy and his threats that he will remove

1493 your orator from the land, make him a necessary party to this suit.

And your orator further shows to your honors that by an act of Congress approved the 15th day of August, 1894, it was provided that all persons who are in whole or in part of Indian blood or descent who are entitled to allotment of land under any act of Congress, or who claim to be so entitled under any allotment act, or any grant made by Congress may commence, prosecute or defend any action, suit or proceeding in relation to their rights thereto in the proper circuit court of the United States and that the said act of Congress proceeded to give circuit courts jurisdiction to take cognizance of any action, suit or proceeding arising within their respective jurisdiction- involving the right *to* any person in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty and the said act further provided that a

judgment or decree of any such court in favor of any claimant to an allotment of land should have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him; which said act of Congress was published by authority of the United States in the 28th vol. of the Statutes at Large on page 305, which act has been amended by reënactment duly approved by the President of the United States, February 6th, 1901, to which for greater certainty your orator begs to refer.

Your orator further states that the defendant, The United States of America, claims that by virtue of the 4th art. of the treaty of March 6th, 1865, it was provided that the assignment — be made in limited quantities from the lands held by said tribe in common to the individual members thereof was confined to the members
1494 thereof of full blood "including their half breed and mixed blood relatives now residing with them," and the defendant claims that your orator and his ancestors were not residing on the reservation at that time — therefore not entitled to land under the 4th art. of the treaty of March 6th, 1865, and the subsequent act of Congress of August 7th, 1882.

Your orator states the fact to be that he was on the reservation at the date of the treaty of March 6th, 1865, but had he been absent therefrom it would not have deprived him of his right to allotment. That it was so considered by the tribe and the officers of the United States who were appointed to carry the provisions of said treaty and laws into effect; that the schedule of allotments or assignments made under the 4th art., of the treaty of March 6th, 1865, as certified to by the chiefs and head men of the Omaha tribe of Indians and the United States Indian agent on the 30th day of December 1870, and submitted and approved by the superintendent of Indian affairs, January 21st, 1871, and approved by the Secretary of the Interior January 26th, 1871, contained names of numerous half and mixed bloods, relatives of the Omaha tribe who were not residing on the Omaha reservation at the time of making the treaty of March 6th, 1865, nor at the time of making the selections in the year 1870, nor at the time of approval of the schedule by the chiefs, the agent, — the superintendent, nor at the time of the approval of the Secretary of the Interior, and whose name did not appear on the schedule just referred to. Allotments were made to one woman and her family who never resided on the reservation, and who at all times and at the time of the treaty of March 6th, 1865 and ever since resided away from the reservation.

1495 Your orator further states that no new rights — acquired under the treaty of March 6th, 1865, but that the assignments provided for in the 4th art. of said treaty had already been provided for by the treaty of March 16th, 1854, and which right of selection and assignment was granted to all members of the tribe alike.

Your orator further states that the defendant, The United States, claims that the complainant or his ancestor have received allot-

ments of land under and by virtue of the treaty of July 15th, 1830, and 10th art., thereof and by the acceptance of said allotment under the policy of the Indian Office neither the complainant nor Margaret Sloan, his ancestor, are entitled to a second allotment or further participation in the tribal rights of said Omaha tribe of Indians; your orator admits that he and his mother received an allotment of land under the provisions of the 10th art., of the treaty of July 15th, 1830, as a half breed member of the Omaha tribe of Indians, that the quantity so assigned was one-half the amount provided by said treaty, and that the said allotment was not accepted by him nor given him in consideration of the relinquishment of any right than those to which he was entitled on the Nemaha reservation.

Numerous mixed blood members of the Omaha tribe of Indians received in lieu of allotments provided for under the 10th art. of the treaty of July 30th, 1830, sums of money which were accepted in consideration of a relinquishment to the United States of all of their interest in and to the deficiency in the half breed reservation under the provisions of the act of Congress, section 6th, ch. 66, of the third session of the 35th Congress, 1859. That most of the
1496 half breeds who received money in lieu of said allotments of land under the treaty of July 15th, 1830, have received assignments of land on the present reservation under the 4th art. of the act of the 6th of March, 1865, and the subsequent act of Congress of August 7th, 1882; that your orator has not in any manner assigned or relinquished his right or claim to the benefits under the various laws and treaties granted to the Omaha tribe of Indians, neither has the United States by the executive department of the Government nor by the enactment of any law authorized this complainant or his ancestor, or any member of the Omaha tribe of Indians to sever their tribal relations. That no relinquishment of such tribal rights by this complainant or any member of this tribe has been accepted or approved by the United States or any of its officers.

Wherefore your orator shows to your honors that he is without a remedy at law and remediless in the premises unless relieved by your honors in this court of equity, and *they* therefore pray- the aid of the court in the premises and that said defendants, The United States of America, Megratahe Grant, John Grant, Charles Grant, minor, by his next friend Megratahe Grant, Harry Baxter — and are null and void and that the selection by John W. Sloan is prior and superior to their claim and is his allotment, and that he and his heirs are entitled to the full use and benefit thereof under and in accordance with the act of Congress of August 7th, 1882.

Your orator further prays for a preliminary order of injunction against the defendants Charles P. Mathewson, Megratahe Grant, John Grant, Charles Grant and Harry Baxter enjoining and restraining each of them, their agents and employés from in any manner interfering with the possession of the land herein
1497 described and that at the termination of this suit the said injunction be made perpetual and such further and other relief as may seem just and proper.

And so may it please your honors to grant unto your orator the most gracious writ of subpœna to be issued under the seal of this court directed to The United States of America, Megreteha Grant and Harry Baxter therein and thereby commanding them on a day certain and under a certain penalty therein to be limited personally to be and appear before this court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to the court shall seem meet.

THOMAS L. SLOAN,
Solicitor for Complainant.

CHARLES E. CLAPP, *Of Counsel.*

Endorsed: Filed May 10 1901 Geo. H. Thummel, clerk.

1498 Thereupon afterwards, to-wit: on the 21st day of September, 1901, "answer to amended bill of complaint was filed in said case, which said answer is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, Complainant, vs. THE UNITED STATES OF AMERICA, Charles P. Mathewson, Megratahe Grant, John Grant, Charles Grant, and Harry Baxter, Defendants.	Doc. T, No. 579. Answer to Amended Bill of Complaint.

The answer of The United States of America, Charles P. Mathewson, Megratahe Grant, John Grant, Charles Grant, and Harry Baxter, defendants, to the amended bill of complaint of John M. Sloan, complainant.

These defendants now and at all times hereafter saving and reserving unto *itself* all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections of the said complainant's said amended bill of complaint contained, and for answer thereto and unto so much and — parts thereof, as these defendants are advised is or are material or necessary for *it* to make answer unto these defendants for answer, say:

1. These defendants deny that John M. Sloan is an Omaha Indian and deny that John M. Sloan is or ever was a member of the Omaha tribe of Indians of Nebraska, upon the contrary, these defendants aver that the said John M. Sloan is a white man and a citizen of the United States, and that his ancestors were white per-

1499 sons and citizens of the United States, and that his said ancestors were not Indians and were not members of the

Omaha tribe of Indians of Nebraska; and these defendants deny that the ancestors of John M. Sloan ever maintained or sustained tribal relations with the Omaha tribe of Indians of Nebraska, and deny that they ever participated in the benefits and other rights of the said tribe, and deny that they were recognized by the said tribe or by the United States as members of the Omaha tribe of Indians.

These defendants for further answer aver that John M. Sloan complainant, claims to trace his lineage back to Michael Barada, who had intermarried with an Indian woman by name of Tuningletha or Taegleha Hacienda, that the said Michael Barada was a free born white man of French nationality and a citizen of the United States, and his wife was an Indian woman, but these defendants are not advised whether she was of Omaha Indian blood or the blood of some other Indian tribe, and therefore leaves the complainant to his proof in that regard.

That there was born to the said Michael Barada and his wife in the year 1811, a daughter by the name of Margaret Barada, who in law and in accordance with the rulings of the Interior Department in its government and control of Indian tribes, took the status of her father and thereby became and was a white person and a citizen of the United States, and was not and never became a member of the Omaha tribe of Indians; that the said Margaret Barada lived in the city of St. Louis with her parents until the year 1854, and was there educated among white persons and was taught to speak the French and English language-, but never learned to speak and did not speak the language of the Omaha Indian tribe.

That the said Margaret Barada intermarried with one Thomas Sloan, the grandfather of this complainant, and that said
1500 Thomas Sloan was a free born white man of Irish nationality and a citizen of the United States, and that said Margaret and her husband Thomas Sloan continued to reside in the city of St. Louis or in Richardson county, Nebraska, with the exception of about two years until some time after the approval act of Congress of August 7, 1882 (22 U. S. Statutes at Large, 341), hereinafter more particularly referred to.

That to the said Thomas Sloan and his wife Margaret, there was born a son named John M. Sloan, this complainant, and the said John M. Sloan was of but one-fourth Indian blood, but under the law and under the rulings of the Interior Department relating to such matters, took the status of his father and became and was a white man and a citizen of the United States, and was not a member of the Omaha tribe of Indians, and lived in the city of St. Louis, and was never on the Omaha reservation. That the said John M. Sloan, so being a white man and a citizen of the United States, was born in the city of St. Louis and married a white woman; that said John M. Sloan from the time of his birth 1840, until the year 1859, lived with his parents in the city of St. Louis, and thereafter moved to the so called Nemaha reservation where he and his mother received patents for lands under the act of July 31, 1854,

section 5 (4) (10 U. S. Stats. 332) to carry into effect article 10, treaty of July 15, 1830, (7 U. S. Statutes 328–330), that thereafter about the year 1880, the said John M. Sloan removed to the State of Colorado where he has ever since resided, and his home is at the town of Aspen, State of Colorado, where he is engaged in business, and has never resided upon the Omaha Indian reservation or upon the lands in his petition described.

2. These defendants for further answer aver that John M. Sloan did not live with the Omaha tribe of Indians on the reserva-
1501 tion at the time of treaty of 1865, or the approval of the act of Congress of 1882; that by the terms of article 4, of the treaty of 1865 (14 U. S. Statutes at Large 667) the assignment of lands in severalty only included their half or mixed blood relatives then residing with the Omaha tribe of Indians, and which by these terms excluded John M. Sloan, being only one-fourth Indian blood, and he not then living with the Omaha tribe of Indians; that the provisions of section 5, of the act of Congress approved August 7, 1882 (22 U.S. Statutes at Large, p. 342) provided only for allotments of lands in lieu of the allotments or assignments provided for in the fourth article of the treaty of March 6, 1865, and therein and thereby limited allotments to the half or mixed blood relatives who were residing with the Omaha tribe of Indians when the said treaty was made, to-wit: March 6, 1865, and it was not and is not the *the* purpose and intent of section 5, of the act of 1882, to permit allotments to half or mixed blood relatives who were not residing with the tribe at the date of the treaty of 1865, and these defendants further aver that the said John M. Sloan was not residing on the Omaha Indian reservation, and was not a member of the Omaha tribe of Indians at the date of the treaty of 1865, or at the time when the said act of Congress of 1882 was approved.

That pursuant to article 4, of the treaty of 1865, the Omaha tribe of Indians co-operating with and under the directions of the Interior Department, prepared a schedule showing the land selected in severalty, and giving the names of the persons entitled to allotments and selections, and which schedule was duly certified to by the chiefs of the Omaha tribe of Indians, and by the Indian agent of the Omaha tribe of Indians, and transmitted and submitted to the Interior Department on or about December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871, and which said schedule did not contain the names of Thomas Sloan or his ancestors, and which said schedule when so ap-
1502 proved by the Interior Department became and was a judgment by the Interior Department, that neither John M. Sloan nor any of his ancestors were entitled to allotments or selections of lands on the Omaha Indian reservation.

3. These defendants further answering say; that in a suit lately pending in the circuit court of the United States for the district of Nebraska, and hereinafter more particularly referred to wherein Margaret Sloan, Thomas L. Sloan, William Barada, Mary Sailors,

Frank Peters and Walter Peters were complainants, and Robert H. Ashley and Henry Fontenelle and others being members of the Omaha tribe of Indians were respondents, said complainants made claim that they had received annuity money. It was agreed between the parties that the officer taking the testimony in said suit, should go to the Omaha Indian agency and examine the annuity pay rolls in the office of Robert H. Ashley, United States agent at Winnebago, and report to the court under his certificate whether the names of the said complainants in said suit were or were not upon the said annuity pay rolls, and that he certified to the court that he had examined the annuity pay rolls for August 1st, 1880, December 13, 1880, September 2, 1884, February 26, 1886, and June 22, 1887, December 3, 1887, February 27, 1889, February 28, 1891, March 9, 1891, March 28, 1891, the same being all the pay rolls then to be found in said office, and further certified to the court, " that the said pay rolls before described did not contain any of the following names, Thomas L. Sloan, Margaret Sloan, William Sloan, Artemesia Sloan, Thomas Sloan, John Sloan, Katherine Whippern, William Barada, Antoine Barada, Euphrasia Barada Peters, Fulton Peters, Frank Peters, Walter Peters, Mary Sailors, or any of the immediate antecedents or descendants of said parties, as far as I know
1503 their names." And which said report is a matter of record in this court, and binding upon the parties thereto, including these complainants.

4. These defendants further answering say: That after the act of Congress of August 7, 1882, (22 U. S. Statutes at Large p. 341) the said Thomas L. Sloan and other half breed and mixed blood Indians becoming advised that an allotment of land to Indians in severalty was about to be made on the Omaha Indian reservation, came from various and unknown parts to the said reservation, with the hope and expectation of obtaining allotments of lands, and that the said Thomas L. Sloan and his ancestors, did then and there make application to Alice C. Fletcher, as United States allotting agent, caused the claim of Thomas L. Sloan and his ancestors to be investigated, and being of the opinion as the result of said investigation that Thomas L. Sloan and his ancestors, were not members of the Omaha tribe of Indians, and were not entitled to allotment of lands upon the said reservation, *and* on April 28, 1884, reported the facts thereon to the Interior Department, and said department under date of May 9, 1884, ruled and determined that Thomas L. Sloan and his ancestors were not members of the Omaha tribe of Indians and were not entitled to have or receive allotments of lands on the Omaha Indian reservation, and which judgment and finding still remains in full force and effect.

5. These defendants further aver that notwithstanding the ruling of the Department of the Interior above set forth, the said Thomas L. Sloan and his ancestors, and other descendants of his father Michael Barada, to-wit, William Barada, Mary Sailors, Frank Peters, Walter Peters, Luke Sailors and others persisted in remaining in-

truders upon the Omaha reservation against the protest of the members of the Omaha tribe of Indians, and as a result thereof, the Omaha tribe of Indians, caused a petition to be prepared and trans-
1504 mitted to the Interior Department, and the Commissioner of Indian Affairs acting upon the said petition and protest, did, under date of November 14, 1888 make his report of the status of said claims, to the Secretary of the Interior, and requested authority to remove said persons including the said Thomas L. Sloan from the said reservation, and afterward on the 5th day of December, 1888, the Secretary of the Interior, directed the removal of Frank Peters, and others making claim under similar state of facts, including the said Thomas L. Sloan from the said Omaha reservation, and which said order and judgment of the Secretary of the Interior is as follows, to-wit:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December* 5, 1888.

Commissioner of Indian Affairs.

SIR: I have considered your report of the 14th, inst., upon a petition filed by the Indians of the Omaha reservation in Nebraska, relative to one Frank Peters whom the petitioners claim belongs to one of the mixed blood families, who were provided with lands by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865, from taking land on the Omaha reservation, and who now have settled contrary to their wishes on their unallotted lands on the Omaha reservation.

It is stated in your report that the said Frank Peters though a mixed blood Omaha, is not adopted by the tribe of the Omaha reservation, that he was not residing with the Omahas when the treaty of March 6th 1865 (14 Statutes 668) was made. (The 4th article of which extended the benefits conferred thereby in respect to allotments to such only of their half or mixed blood relatives as were residing with them at the date of the treaty. That his name is not borne upon the duly certified roll of 1871, submitted
1505 by the Omaha council which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha reservation which was approved by the department January 26, 1871. That upon the passage of the act of August 7, 1882 (22 Stats. 341) providing for the sale of a portion of the Omaha reservation, and the allotments of their lands, in severalty to the members of the tribe a number of mixed bloods from the old Nemaha reservation, and among them the Peters family, came to the Omaha reservation in the hope of securing allotments under the new law, and that this was denied them.

Your office holding that under the said act of August 7, 1882, none but members of the tribe, and their half or mixed blood relation- residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants and such others who may have been lawfully admitted

into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements and your finding that the said Frank Peters is not entitled to allotments of land on the Omaha reservation under treaty of March 6, 1865, and provisions of the act of Congress of August 7th, 1882, and is upon the reservation without authority, and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him, and any other persons who may be thereon under a similar state of facts, from the Omaha reservation.

Very respectfully,

(Signed) WM. F. VILAS, *Secretary.*

5584—Indian division 88.

That pursuant to said order the Indian agent served notice upon the said intruders to remove from the Omaha reservation.

1506 6. These defendants further aver that the said Margaret Sloan, Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and Walter Peters failed and neglected to remove from the reservation pursuant to said order and notice. The facts relating thereto were reported by the United States Indian agent to the Commissioner of Indian Affairs, whereupon under date of August 27, 1890, the Hon. T. J. Morgan, Commissioner of Indian Affairs, ordered and directed Robert H. Ashley, United States Indian agent, that he require Mr. Frank Peters and others of a like class including Thomas L. Sloan, to remove from the Omaha reservation, and upon their failure so to remove, said Indian agent was to report such fact to the Commissioner of Indian Affairs, and thereupon the said Indian agent served written notice upon Thomas L. Sloan, Frank Peters, William Barada, Luke Sailors and Walter Peters, to leave the said reservation, and that they informed said agent that they would not do so until compelled to do so by process of law or force, and under date of October 17, 1890, the United States Indian agent made the following report to the Commissioner of Indian Affairs regarding Margaret Sloan, Thomas L. Sloan that he did, "on the 24th day of October, 1890, give written notice to Thomas L. Sloan and Margaret Sloan to leave the Omaha reservation, under instruction of office order of August 27, 1890.

I would further say in explanation that the Omaha Indians in council on the 7th day of October, discussed this matter with the Sloans, and it was almost the unanimous opinion and wish that they be removed from the reservation the same as Peters and others. I am unable to find where the Sloans have any more right than the others mentioned, and take them to be of "like class" as mentioned in yours of the 27th of August."

1507 On January 12, 1891, upon the earnest request of a delegation of the Omaha tribe of Indians then in the city of Washington, the Commissioner of Indian Affairs repeated his recommendation of October 2nd, for military aid to eject said intruders and

which recommendation requested that the Hon. Secretary of War to cause the commander of the military post nearest to reservation upon the request of the United States Indian agent to furnish military aid, to remove from the land of said reservation, said Frank Peters, Luke Sailors and Walter Peters, and such others as were intruders thereon under facts similar to *that* existing in the case of Frank Peters and which included Thomas L. Sloan, as he was of that class.

These defendants further aver that on January 13, 1891, Hon. T. J. Morgan, Commissioner of Indian Affairs, issued a letter of instruction to Robert H. Ashley, U. S. Indian agent, at the request and solicitation of a delegation of the Omaha tribe of Indians, directing him that William Barada, Thomas L. Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors and their families belong to a class of trespassers on the Omaha reservation, and are not entitled to lands or benefits under the act of August 7, 1882, and should not be enrolled by him or allowed to share in the payment of annuities.

7. These defendants further aver that Margaret Sloan, Thomas L. Sloan, William Barada, Margaret Sloan, Frank Peters and Walter Peters becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the department to have them forcibly removed from the reservation as intruders and trespassers thereon, filed a bill in equity in the circuit court of the United States, for the district of Nebraska, wherein Robert H. Ashley, U. S. Indian agent, Henry
1508 Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others being members of the Omaha tribe of Indians, were made defendants and in which said suit, said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian agent from forcibly removing the complainants therein from the Omaha reservation; that in said case the defendants in said suit filed answer, and proofs were taken and subsequently in the spring of 1893, the said circuit court of the United States, for the district of Nebraska, entered a decree against the complainants in said suit, and in favor of the defendants therein, and which said judgment and decree was not appealed from, but remained in full force and effect.

These defendants further aver that afterward the said Margaret Sloan and Thomas L. Sloan endeavored to have themselves adopted into the Omaha tribe of Indians, and to have themselves recognized by the Interior Department as membars of the Omaha tribe of Indians, and to that end submitted to the department certain petitions purporting to be signed by certain members of the Omaha tribe of Indians; that under date of September 6, 1894, the department ruled that the said Margaret Sloan and Thomas L. Sloan, should

not be admitted to membership in the Omaha tribe of Indians, and accordingly so ordered, and in which order and opinion the department held as follows:

"Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure separate and distinct from their alleged rights as Omaha Indians by blood, and that such alleged right is not necessarily a test for such
1509 adoption, there remains the right to admission by the free will and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seem to be in proper form, and to express the desire of a majority of the members of the tribe that the persons in question shall be placed upon the rolls of the tribe, and be admitted to all the rights and privileges of other members thereof.

Besides the opposing petition hereinbefore referred to, the department is in receipt of recent information which shows that of the one hundred and fifty-seven persons whose names appear on the six petitions presented with your letter, only seventy now favor the claimants; that eleven others have since assented to their adoption making eighty-one in all now favorable; that twenty-four of the signatures thereon were not written by the parties whose names are given, nor was the use of their names authorized by them, that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women—neither of whom have any voice in such matters; that one of the nine members of the council purporting to have signed one of the petitions, did not sign nor authorize the use of his name, and further, that there are about one hundred and eighteen male members of the tribe, of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petition in question, the facts presented seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe that the Sloans be not admitted to membership and it is so ordered.

1510 In reference to that part of your report wherein you state that Thomas L. Sloan has held and improved a tract of land since 1881 or 1882, on the Omaha reservation, it would seem that he is doing so in defiance of any legal authority of occupation."

That after the above order and ruling of the department, the counsel for Margaret Sloan and Thomas L. Sloan applied to the department for reconsideration of the adoption case, and the department under date of November 17, 1896, re-affirmed this ruling and among other things therein said:

"It is not denied, nor has it ever been, that the Sloans, mother and son, are of part Omaha Indian blood. The tribe recognized them as such and made provisions for them, with others, by the treaty of 1830, and in the opinion of the department, and the Omahas themselves, their claim- as such mixed bloods were extin-

guished by the lands given them under the terms of the tenth article of the treaty named.

* * * * * * *

The claims of Margaret and her son William E., were extinguished prior to the birth of Thomas L. It is nowhere alleged or claimed that the latter is the offspring of a mother of Indian blood, much more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claim- of Margaret and Thomas L. are based upon their birthright as Omaha Indians and upon their alleged adoption in recent years by the tribe.

The birthright claim of Margaret has been extinguished. Thomas L. never had such a claim. Neither of them have any claim by adoption, never having been regularly, fairly or properly adopted by the tribe, as was shown by department letter of September 6, 1894.

1511 Notwithstanding that Mr. Breckenridge has advised the department by letter dated the 30th ultimo, of his withdrawal as attorney *fro* the claimants, I have caused this review of the case to be made, and adhere to the opinion expressed in department letter of September 6, 1894, that the persons named have no valid, legal claims to membership with the Omaha tribe of Indians."

And defendants aver that the above ruling of the Department of the Interior established the fact that Margaret Sloan and her descendants, the plaintiff- herein, then were not and had not theretofore been members of the Omaha tribe of Indians, and the defendants aver that the said Margaret Sloan and her descendants the plaintiff- herein, are not and never have been members of the Omaha tribe of Indians.

9. These defendants for further answer aver that there were and are other descendants of the said Michael Barada and his wife, Tuningletha or Taegleha Hacienda, to-wit: a son Antoine who took the status of his father as a white man and American citizen, and said Antoine Barada married Josephine Vien a white woman of French nationality, and an American citizen and from which last marriage there *was* born children by name, William Barada, Julia Barada and Euphrasia Barada; that the said Julia Barada first intermarried with one Barnaby, and afterwards to one Meyers, her second husband, and afterwards to William Provo, her third husband, and to whom children were born; and the said Euphrasia Barada intermarried with Fulton Peters a free born white man of German nationality, and an American citizen, and from which marriage there were born children, Frank Peters, Walter Peters, Mary Peters and which said Mary Peters afterward intermarried with Lot Sailors, and while said persons have all been insist-

1512 ent upon the right to an allotment of lands on the Omaha Indian reservation, the Omaha tribe of Indians and the United States *has* persistently denied the right of each and all of

them, including the said Thomas L. Sloan, to an allotment of land on the Omaha Indian reservation, and *has* likewise denied that they are Indians, and have likewise denied that they are members of the Omaha Indian tribe.

10. And these defendants particularly aver that John M. Sloan, a son of Margaret Sloan and Thomas Sloan, never lived upon the Omaha reservation. Upon the contrary aver that the said John M. Sloan is an engineer by trade, and is living at the town of Aspen, in the State of Colorado, and so has been for more than 20 years last past, and is there engaged in business among and with white persons having fully adopted the habits of civilized life, and never was upon or ever occupied any part of the Omaha reservation, and never in any manner affiliated with the tribe of Indians, and have never been adopted by the said tribe or recognized as a member thereof.

11. These defendants for further answer aver, that under article 10 of the treaty of July 15, 1830, (7 U. S. Statutes at Large 328–330) and under the provisions of section 5, (4) of an act of Congress approved July 31, 1854, (10 U. S. Statutes at Large, 332) a patent was issued to Margsret Sloan for three hundred and twenty acres of land on the so-called Nehama reservation, and by the terms of which treaty of 1830, and the said act of Congress of 1854, the rights of Margaret Sloan and her descendants including John M. Sloan were exhausted and extinguished as claimants to membership in the Omaha tribe of Indians, and to any further or other allotment of land.

12. These defendants for further answer deny that the complainant was the head of a family, and deny that the complainant is entitled to an allotment of 160 acres of land as the head of a
1513 family; and avers that the complainant at the date of the approval of the act of Congress of August 7, 1882, being the act under which complainant claims the right to an allotment of land was then a single person; that the complainant was such single person at the date of the amendatory act of 1893, and as such single person would not be entitled to have in any event more than 80 acres of land.

These defendants further aver that the complainant never occupied or improved the N. ½ — the N. W. ¼ of section 35, or the N. E. ¼ of N. E. ¼ of section 34, or the N. E. ¼ of the S. W. ¼ of section 34, township 25, range 7; that he did not make a selection of the lands claimed and that if any selection ever was made of said lands in his name or in his behalf, the same was so made by Thomas L. Sloan.

These defendants further aver that the United States allotting agent appointed by the Interior Department to investigate selections and make allotments of land, investigated, ascertained, and found as a fact that the complainant was not entitled to an allotment of any of the lands claimed by him and reported his said findings to the Interior Department, and which said findings having been approved by the said department.

That the said United States allotting agent did find upon investigation that John Grant and Megratahe Grant made claim to and had a prior claim to the N. ½ of the N. W. ¼ of section 35, and that Charles Grant made claim to and had a superior claim to the N. E. ¼ of N. E. ¼ of section 34; and that said United States allotting agent thereafter made his official report to the Commissioner of Indian Affairs; that the said Megratahe Grant and John Grant and Charles Grant were entitled to the lands allotted to them respectively as above described, and which said allotments were subse-
1514 quently approved by the Commissioner of Indian Affairs, and patents therefor were issued to the said Grants under date of April 11, 1900, and which said allotments were made and the said patents issued in the regular and due course of business.

These defendants further aver that the complainant herein did not have any prior or superior or vested right to the land so patented to the said Grants, and that the said allotments and the said patents to the said Grants were made in all respects in conformity to law.

13. And these defendants say that if there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered or denied, is not true to the knowledge or belief of these defendants, and these defendants deny that the said complainant is entitled to the relief or any part thereof in the said complainant demanded. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. S. SUMMERS, *U S. Att'y.*

JNO. L. WEBSTER,
Special Counsel.

Endorsed: Filed Sep. 21 1901 Geo. H. Thummel, clerk.

1515 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, stipulation and evidence *was* filed in said case, which said stipulation and evidence *is* in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Magratahe Grant, John Grant, Charles Grant, and Harry Baxter Defendants.

Docket "T," No. 579. Stipulation of Evidence.

It is hereby stipulated that the following named persons will testify in behalf of the defendants, to the facts set down after their names respectively, and it is further stipulated and agreed that said statements may be received in evidence with like force and effect, as if the deposition- of the respective parties to the said facts had been formerly taken.

Harry Baxter will testify that he is the person to whom has been allotted the north-east quarter of the southwest quarter of section 34, township 25, range 7. That he is a member of the Omaha Indian tribe, and a full blood Omaha Indian, and is 25 years of age. That his father and mother are both dead, and that he was informed by his brother, Washington Baxter that he, Washington Baxter had made a selection of land for him, and that his brother Washington Baxter is also dead, having died about the year 1894. That his said brother, Washington Baxter told this witness that he had selected land for him, and that the land so selected was close by the selection of William F. Springer.

1516 The witness will further testify that he reported the above facts to Allotting Agent John Rankin while the said Rankin was making the allotments under the act of 1893.

William F. Springer will testify that he is the same William F. Springer who was the interpreter for Allotting Agent Rankin and that he is a member of the Omaha tribe of Indians; and the said Springer will further testify that he remembers that Harry Baxter appeared before the said Rankin, allotting agent, and made known to said Rankin that his father was dead, and that his brother, Washington Baxter had selected for Harry Baxter some land near my (this witness,) own allotment. That the allotment of this witness is the south half of the southwest quarter of section 26, in township 25, range 7, and that the allotment made to Harry Baxter is in an adjoining section about one-half mile distant from the allotment of this witness.

The said Springer will further testify that the said Rankin at said time examined the tract book, and there found a memorandum showing that the land in controversy, the northeast quarter of the southwest quarter of section 34, township 25, range 7 had been set down as selected for the said Harry Baxter.

The said Springer will further testify that at the time said allotment was made to the said Harry Baxter, that there were no improvements on said land allotted to him, Harry Baxter, and that no other person made any claim to the said land.

The said Springer will further testify that in the making of the allotments it frequently occurred that some of the younger Indians had not made any particular selection of lands, and that it
1517 became necessary for the allotting agent in making the allotments to select unoccupied lands for such members of the tribe, so that all might receive allotments; and in such cases the allotting agent would allot some portion of the unoccupied lands to such children, and that in making said allotments if there was found any evidence that the child, or the parents of the child, had made selections, that such selections were allotted; but where no selections had been made that the allotment was made upon some unoccupied land.

The said Springer will further testify that the said Rankin would also consult the tract book at the agency, and if he there found a notation that any particular land had been selected for a particular Indian that he would follow out the said record if there were no conflicting claims presented which contradicted the entry on the tract book, and that it is the recollection of this witness that the land allotted to Harry Baxter was so entered on the tract book.

The said witness will further testify that the said Rankin allotted all of the unallotted lands then on the reservation excepting about 1800 acres of rough land lying up and down the Missouri river, excepting such land as has been reserved for the mixed blood claimants.

And said Springer will further testify that there are some members of the Omaha tribe of Indians to whom allotments were not made, and the reason they were not made at the time was that said Indians did not wish to accept allotments on the remaining lands along the Missouri river, for the reason that the lands were very rough and not desirable, and preferred to wait to find the
1518 result of these litigations, hoping that thereby they might be enabled to receive allotments upon some of the lands which have been reserved for these mixed blood claimants.

JNO. L. WEBSTER,
Att'y for Def't.
THOMAS L. SLOAN,
CHARLES E. CLAPP,
Att'ys for Complainants.

Endorsed: Filed Sep. 3, 1902, Geo. H. Thummel, clerk.

1519 Thereupon afterwards, to-wit:—on the 3rd day of September, 1902, a deposition was filed in said case, which said deposition is in words and figures following to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, Complainant, *vs.* THE UNITED STATES OF AMERICA, CHARLES P. Mathewson, Magratahe Grant, John Grant, Charles Grant, and Harry Baxter, Defendants.	Docket T, No. 579. Depositions.

Testimony taken in behalf of the complainant, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at Pender, in the State of Nebraska, on this the 22nd day of August, 1902, the complainant being represented by Thomas L. Sloan, Esq., and the defendants being represented by John L. Webster, Esq.

WILLIAM F. SPRINGER, a witness produced in behalf of the complainant, being first duly sworn, deposes and says, as follows:—

Direct examination by Mr. THOMAS L. SLOAN:

Q. Do you know the lands described as the north half of the north-west quarter of section 35, and the north-east quarter of the north-east quarter of section 34, all in township 25, north of range 7 east?

A. Yes sir.

Q. Who broke up those lands, or under whose direction were they broken?

A. Charles M. Snyder broke the lands.

Q. Do you know by whom he was employed at the time?

A. He told me that he was breaking it out for Thomas L. Sloan.

1520 Q. Who has had the possession and control and direction of those lands since that time?

A. Thomas L. Sloan.

Q. Do you know for whom?

A. He told me for John M. Sloan.

Q. For about how long has it been since the lands have been broken up and occupied?

A. Since 1893.

Q. Do you know if any part of the north-east quarter of the south-west quarter of section 34 is broken, is part of it broken, if you know?

A. I do not think it is.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. When was any part of the land allotted to Harry Baxter broken?

A. I think last year, 1901.

Q. Do you know who broke that land at that time?

A. I think that Walter K. Mitchell broke it.

Q. For Thomas L. Sloan or under the direction of Thomas L. Sloan?

A. I do not know who he broke it for. He did the breaking on it.

Q. When was the north half of the north-west quarter of section 35 broken under the direction of Thomas L. Sloan?

A. In 1893.

Q. And the north half of the north-west quarter of section 35 is the land allotted to John Grant and Magratahe Grant?

A. Yes sir.

Q. Do you know who has been cultivating that land, or has it been cultivated since that time?

A. It has always been operated under the directions of Sloan, Thomas L. Sloan.

Q. When you say always, you mean since 1893?

1521 A. Yes, sir.

Q. Well, what cultivation has been on that land?

A. All of it.

Q. Do you mean by that that the land has been plowed up?

A. Yes sir.

Q. And crops raised on it?

A. Yes sir.

Q. Well, then, how came it that the north half of the south-west quarter of section 35 was allotted to the Grants by Allotting Agent Rankin?

A. It was allotted. He had the description of the land on a piece of paper and that——

Q. You say he?

A. I mean Frank Grant; he had the description of the land on paper, and I think that also, that description corresponded with the description on the tract book, and there was no other claimants to the land.

Q. Well, was John Grant, who produced this paper memorandum the father of these Grants to whom the allotment was made?

A. It was Frank Grant, the father of John Grant, and the husband of Megratahe Grant.

Q. Is Frank Grant who claimed this selection for John Grant and Megratahe Grant living or dead?

A. He is dead.

Q. When did he die?

A. I think in the month of May, 1900.

Q. How old is John Grant?
A. John Grant, I should judge he was about 25 years old.
Q. Is Megratahe Grant living?
A. Yes, sir.

Witness excused.

1522 By consent of the parties hereto, the signature of the witness to the above deposition is hereby waived.

I do hereby certify that the above named witness, William F. Springer was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was reduced to writing in my presence, and by me typewritten, and that his signature thereto was waived by the parties hereto. That said deposition was taken pursuant to the agreement of parties at Pender, Nebraska, on the 22nd day of August, 1902. That both complainant and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER,
Notary Public.

My fees:

Swearing 1 witness	.10
16 folios at 20c	3.20
	$3.30

Pd. by counsel for pl'ff.
WM. S. HELLER.

Endorsed: Filed Sep. 3 1902 Geo. H. Thummel, clerk.

1523 Thereupon afterwards, to-wit: on the 22nd day of September 1902, replication was filed in said case, which said replication is in words and figures following, to-wit:

U. S. Circuit Court, District of Nebraska.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

JOHN M. SLOAN
v.
UNITED STATES OF AMERICA ET AL. } No. 579, Doc. T.

The Replication of John M. Sloan, Plaintiff, to the Answer of United States of America et al., Defendants.

This repliant saving and reserving to himself all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the

defendants for replication thereunto saith, that he doth and will aver, maintain, and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficient- replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct and humbly prays as in and by his said bill he hath already prayed.

THOS. L. SLOAN,
CHAS. E. CLAPP,
Solicitors for Complainant.

Endorsed: Filed Sep. 22 1902 Geo. H. Thummel, clerk.

1524 Thereupon afterwards, to-wit: on the 1st day of October 1902, deposition of Thomas L. Sloan was filed in said case which said deposition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, Complainant, *vs.* THE UNITED STATES OF AMERICA, CHARLES P. MATHEWSON, MEGRATAHE GRANT, JOHN GRANT, CHARLES GRANT, and HARRY BAXTER, Defendants.	No. 579, Docket T. Depositions.

Testimony taken in behalf of the complainant, by consent of the parties hereto, before William S. Heller, a stenographer and notary public, at the office of John L. Webster, Esq., 826 New York Life building, Omaha, Nebraska, on this 26th day of September, 1902, the complainant being represented by Messrs. Thomas L Sloan and Charles E. Clapp and the defendants by John L. Webster, Esq.

THOMAS L. SLOAN, called as a witness in behalf of the complainant, and after being first duly sworn, testified as follows:

During the summer of 1891 Malissa Sloan, the wife of John M. Sloan came to the Omaha reservation to make a selection of land on his behalf; that she had with her a power of attorney, a general power of attorney from John M. Sloan, authorizing her to look after his business generally, and that I made the selection, or assisted her in making the selection of the land now in litigation and that later Mr. Clapp and I made a contract with her to prosecute his suit.

That at the time of making the selection it was not marked
1525 either by plowing or otherwise excepting surveying stakes; that John M. Sloan was a son of Margaret Sloan. That he was first married about the year 1872 that he had a child born by the name of Gertrude Sloan; that she was still living in the year 1889 which was the last time I heard of her; I do not know where she is at this time. I think she was born in 1874.

Cross examination.

Questions by Mr. JOHN L. WEBSTER:

Q. Was this child Gertrude living with her father at Aspen, Colorado?
A. Is she now?
Q. Was she during the time you knew her?
A. No she was not.
Q. Where was she born?
A. She was born on the Nemaha half breed reservation.
Q. Did she come with her father to Aspen?
A. I do not know that she did.
Q. John M. Sloan's wife went with him to Aspen, Colorado?
A. That was his second wife; this last woman that went with him to Aspen was his second wife, and they had a child at that time which has since died.
Q. Malissa Sloan is his present wife?
A. Yes sir.
Q. And she lives at Aspen, Colorado?
A. No sir, she lives at Falls City, Nebraska.
Q. She does not live with her husband?
A. He has been in Alaska, up in the mines for three or four years past, the last we heard of him he had his hand frozen and had to have it amputated.
Q. Did she live with him in Aspen, Colorado while he lived there?
1526 A. Yes sir.
Q. How long since you have had any communication with John M. Sloan?
A. Directly I have not had anything; the last communication I had was in 1895.
Q. Where is the power of attorney that you say that his wife had?
A. She kept the possession of it herself.
Q. You have not got possession of it?
A. No sir.

Mr. WEBSTER: The defendants move to strike out — the general statement of the witness that part thereof wherein he undertakes to

recite the contents or character of that power of attorney, as incompetent.

Witness excused.

By consent of the parties hereto the signature of the witness to the above deposition is hereby waived.

I hereby certify that the above named witness, Thomas L. Sloan, was first duly sworn to testify the truth, the whole truth and nothing but the truth, that his said deposition was reduced to writing in the presence of the said witness and by me typewritten, and that his signature to said deposition was waived. That said deposition was taken by consent of the parties hereto at the office of John L. Webster, Esq., Omaha, Nebraska, on the 26th day of September, 1902. That both complainants and defendants were present by counsel at the taking of said deposition.

WM. S. HELLER.
Stenographer and Notary Public.

My fees:

Swearing 1 witness	.10
6 folios at 20	1 20
1 certificate	25
	1 55

Endorsed: Filed Oct. 1 1902. Geo. H. Thummel, clerk.

1527 Thereupon afterwards, to-wit: at the May 1902 term of said court, and on the 1st day of November, 1902, the following decree was signed and filed in said case, and entered of record on the journal of proceedings of said court, had on said day, to-wit:

JOHN M. SLOAN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Charles P. Mathewson, Magratahe Grant, John Grant, Charles Grant, and Harry Baxter, Defendants. } No. 579, Doc. T. Decree.

This cause having been submitted to the court upon the pleadings and proofs, and having been argued by counsel for the respective parties, and the court being fully advised in the premises does find upon the merits of the case for the defendants and against the complainant. It is therefore

Ordered, adjudged and decreed that the injunction heretofore granted herein be and is hereby dissolved, and the suit be and is hereby dismissed at the costs of the complainant taxed at $—.

W. H. MUNGER, *Judge.*

Endorsed: Filed Nov. 8 1902 Geo. H. Thummel, clerk.

1528 Thereupon afterwards, to-wit:—on the 13th day of October 1903, assignment of errors *were* filed in said case, which said assignment of errors *are* in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Harry Baxter, Charles Grant, John Grant, Megretaha Grant, and Charles P. Mathewson, Defendants.
} Docket "T," No. 579. Assignment of Errors.

Comes now the complainant in the above entitled cause and assigns the following errors in the record and proceedings in said cause as follows:

First. The court erred in finding and determining that John M. Sloan, received an allotment of land in the Nemaha reservation and was for that reason debarred from claiming a further allotment upon the Omaha reservation.

Second. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, made July 15, 1830, as meaning and intending that the taking of an allotment of land by a member of such tribe pursuant to article 10 of said treaty thereby extinguished the claim of such Indian to a further allotment of land or further allotments or benefits in the tribal property as a member of such tribe.

Third. The court erred in construing the treaty between the United States and the Omaha tribe of Indians, of July 15, 1830, as meaning and intending that half-breed members of the tribe
1529 who secured allotments of land in severalty in the Nemaha reservation under the terms of said treaty are not entitled to a second allotment under the act of 1882, although at the time of its passage they were residing on the reservation in the tribal relation.

Fourth. The court erred in construing the treaty made between the Government of the United States and the Omaha tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Fifth. The court after construing the treaty of March 6, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha reservation on August 7, 1882, the date of the passage of said act.

Sixth. The court erred in holding that the complainant was not a member of the Omaha tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Seventh. The court erred in construing and declaring that the act of Congress of August 7, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Eighth. The court erred in holding that a person of mixed blood who did not reside upon the Omaha reservation at the date of the passage of the act of August 7, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

1530 Ninth. The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of land or right to participate in the common tribal property.

Tenth. The court erred in holding and determining that John M. Sloan was not entitled to claim and have allotted to him the land described in plaintiff's bill of complaint, to-wit: The north half of the northwest quarter of section thirty-five (35) in township twenty-five (25) north of range seven (7) east, and the northeast quarter of the northeast quarter, and the northeast quarter of the southwest quarter of section thirty-four (34) in township twenty-five (25) north of range seven (7) east of the 6th P. M.

Eleventh. The court erred in that the court by its judgment and decree in said cause found upon the merits of the case for the defendants and against the complainant.

Twelfth. The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainant.

Wherefore, complainant prays that said decree be reversed and that complainant be restored to all things lost by reason thereof.

JOHN M. SLOAN,
Complainant,
By THOMAS L. SLOAN &
CHAS. E. CLAPP,
His Attorneys.

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

1531 Thereupon, to wit:—on the 13th day of October, 1903 petition for appeal was filed in said case, which said petition is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

JOHN M. SLOAN, Complainant,
vs.
THE UNITED STATES OF AMERICA, Harry Baxter, Charles Grant, John Grant, Megratahe Grant, and Charles P. Mathewson, Defendants.

Docket "T," No. 579. Petition for Appeal.

Comes now the complainant in the above entitled cause and shows to the court that the final judgment and decree heretofore rendered in the above entitled cause on the 8th day of November, 1902, does, as complainant alleges, grievous injury to this complainant, and complainant conceives himself to be aggrieved and prejudiced by the various orders and rules of the court in said cause and alleges divers grievous and prejudicial errors of the court in and to the making of its findings, judgments and decree in said cause.

Complainant further shows to the court that in said case the construction of various treaties made between the United States and the Omaha tribe of Indians is drawn in question. That an assignment of errors setting forth and specifying the several errors complained of has been duly filed in said cause in the manner provided by law.

Wherefore complainant prays for the allowance of an
1532 appeal in said cause to the Supreme Court of the United States, and that a transcript of the record and proceedings, duly authenticated, may be sent to said court.

JOHN M. SLOAN,
Complainant,
By CHAS. E. CLAPP &
THOS. L. SLOAN,
His Attorneys.

And now on this 13th day of October, 1903, it is ordered that the appeal be allowed as prayed. Bond for costs fixed at $100.00.

W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13, 1903, Geo. H. Thummel, clerk.

Thereupon, to-wit:—on the 13th day of October, 1903, bond was filed in said case, which said bond is in words and figures following, to-wit:

1533 579, T.

Know all men by these presents, that we, John M. Sloan & John H. Kuhn are held and firmly bound unto the United States of America, John Grant, Charles Grant and Harry Baxter in the full and just sum of one hundred dollars to be paid to the said The United States of America, John Grant, Charles Grant and Harry Baxter heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of October in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term A. D. 1902, of the circuit court of the United States for the district of Nebraska, in a suit depending in said court between John M. Sloan plaintiff and The United States of America, John Grant, Charles Grant, Harry Baxter defendant-decree was rendered against the said John M. Sloan and the said John M. Sloan has obtained an appeal of the said court to reverse the decree in the aforesaid suit. and a citation directed to the said The United States of America, John Grant Charles Grant and Harry Baxter citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said John M. Sloan shall prosecute said appeal to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JOHN M. SLOAN. [SEAL.]
JOHN H. KUHN. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of
LOUIS DICK.

Approved by
W. H. MUNGER, *Judge.*

Endorsed: Filed Oct. 13 1903 Geo. H. Thummel, clerk.

1534 Thereupon afterwards, to-wit: on the said 13th day of October 1903, a citation was duly signed in said case, and returned and filed October 26th, 1903, with proof of service attached thereto, the following of which is the original:

1535 The United States of America to the United States of America, Harry Baxter, Charles Grant, John Grant, Megretaha Grant, and Charles P. Mathewson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein John M. Sloan is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable W. H. Munger judge of the circuit court of the United States for the district of Nebraska, this 13th day of October in the year of our Lord one thousand nine hundred and three.

W. H. MUNGER,
United States District Judge for the District of Nebraska.

[Endorsed:] # 2014. No. 579. United States circuit court, district of Nebraska. John M. Sloan *vs.* United States, *et al.* Citation. Filed Oct. 27 1903 Geo. H. Thummel, clerk.

1535*a* Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

I hereby certify and return that I served the annexed citation on the therein-named The United States of America, Harry Baxter, Charles Grant, John Grant Megretaha Grant, and Charles P. Mathewson, by handing to and leaving a true and correct copy thereof with John L. Webster, their attorney personally at Omaha in said district on the 21 day of Oct., A. D. 1903

T. L. MATHEWS,
U. S. Marshal,
By JOHN O. MOORE, *Deputy.*

1535*b* UNITED STATES OF AMERICA, *District of Nebraska, County of Douglas,* } ss:

H. P. Peterson of lawful age, being first duly sworn on his oath says he is a resident of the city of Omaha, county of Douglas and State of Nebraska. That on the 26th day of October 1903 he re-

ceived the annexed citation and on the same day duly served the same upon the United States of America, by delivering to and leaving with W. S. Summers, United States district attorney for the district of Nebraska, a full, true and correct copy of said citation.

Witness my hand this 26th day of October 1903.

H. P. PETERSON.

Subscribed in my presence and sworn to before me this 26th day of October 1903.

{Seal of Susan M. Bonnevier, Notary Public, Douglas County, Nebraska. Commission Expires Oct. 8th, 1908.}

SUSAN M. BONNEVIER,
Notary Public.

1536 Thereupon afterwards, to-wit:—on the 27th day of October, 1903 precipe for transcript was filed in said case, which said precipe is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

To the clerk of said court:

Please prepare transcripts in the following cases, and include therein the following pleadings and proceedings hereinafter enumerated:

JOHN M. SLOAN ET AL. v. UNITED STATES. } No. 174, Docket "T."

1. Amended bill of complaint.
2. Answer.
3. Stipulation (as to evidence in all cases).
4. Letter of H. B. Denman, Indians in Nemaha county.
5. List of allotments to Omaha tribe of Indians and other tribes.
6. Certified copies of annuity rolls.
7. Certificate of Charles P. Mathewson, list of half breeds allotted who had allotments before.
8. Patent of Me-man-she-ha-ne.
9. Patent of Lewis Dick.
10. Copy of census roll.
11. Stipulation as to facts admitted.
12. Stipulation as to testimony of Thomas L. Sloan and William Springer, Megratahe Grant, John Grant and Antoine Cabney.
13. Stipulation as to testimony of Anna Cabana.
14. Stipulation of facts as to witnesses.

15. Depositions for complainants.
16. Correspondence.
17. Correspondence.
18. Copy of Omaha Indian allotments of 1871.
19. Deposition of L. L. Frost.
20. Deposition of Spafford Woodhull.
21. Replication.
22. Deposition of Artemesia Sloan Frost, and Carey La Flesche.
23. Deposition of John T. Spencer.
24. Deposition of Robert W. Furnas.
25. Stipulation as to case of United States *vs.* John T. Spencer.
26. Deposition of Thomas L. Sloan.
27. Deposition of Charles P. Mathewson, Thomas L. Sloan and Prairie Chicken.
28. Deposition of Charles P. Mathewson, for def'ts.
29. Letter from Commissioner of Indian Affairs.
30. Correspondence.
31. Genealogy of Sloan, Barada & Peters families.
32. Genealogical table of Omaha Indian claimants to allotments.
33. Memorandum opinion.
34. Decree.
35. Appeal papers.

1537 JOSEPHINE MITCHELL *v.* UNITED STATES. } No. 265, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Stipulation.
5. Stipulation of evidence.
6. Decree.
7. Appeal papers.

EMIEL PETERS *vs.* UNITED STATES. } No. 266, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Decree.
5. Appeal papers.

FRANK A. PETERS
v.
UNITED STATES. } No. 267, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Decree.
5. Stipulation of facts.
6. Deposition- Kuhn and Fulton Peters.
7. Deposition Frank Peters.
8. Deposition Frank Peters.
9. Stipulation of facts.
10. Deposition of William Barada.
11. Appeal papers.

WALTER PETERS
v.
UNITED STATES. } No. 268, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Stipulation of facts.
5. Decree.
6. Appeal papers.

JACOB PETERS
vs.
UNITED STATES. } No. 269, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Stipulation W. F. Springer.
1538 5 5. Stipulation W. K. Mitchell.
6. Decree.
7. Appeal papers.

SARAH F. McCREARY
vs.
UNITED STATES. } No. 362, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Decree.
5. Appeal papers.

JENNIE M. ARNOLD
vs.
UNITED STATES. } No. 363, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Stipulation.
5. Decree.
6. Appeal papers.

MITCHELL MONETTE ET AL.
vs.
UNITED STATES. } No. 364, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Deposition Frank La Flesche.
5. Deposition Thomas L. Sloan.
6. Deposition David Monette.
7. Deposition William Hamilton.
8. Deposition William Provo, *et al.*
9. Stipulation of facts.
10. Stipulation of facts as to evidence of Mitchell Monette, Samuel H. Campbell, Alfred Hallowell and Josiah Fields.
11. Depositions of Ellis Blackbird, Richard Robinson, Simeon Hallowell, Hiram Chase and Alfred Hallowell.
12. Depositions of Anna Cabana, Mrs. Emily Campbell, Mitchell Monette.
13. Stipulation as to evidence of Alfred Hallowell, *et al.*
14. Stipulation as to testimony of Thomas L. Sloan.
15. Deposition of Harrison McCauley.
16. Decree.
17. Appeal papers.

CASSIE M. KARCH
vs.
UNITED STATES. } No. 365, Docket "T."

1. Amended bill.
2. Answer.
3. Stipulation as to evidence of Mitchell Monette, *et al.*
4. Replication.
1539 5. Decree.
6. Appeal papers.

THOMAS BARADA
vs.
UNITED STATES. } No. 460, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Decree.
5. Appeal papers.

MARY SAILORS
vs.
UNITED STATES. } No. 461, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Decree.
5. Appeal papers.

ARTEMESIA FROST ET AL.
v.
UNITED STATES. } No. 462, Docket "T."

1. Amended bill of complaint.
2. Answer.
3. Deposition of T. L. Sloan, behalf compl't.
4. Replication.
5. Decree.
6. Appeal papers.

EDWARD KUHN
vs.
UNITED STATES. } No. 502, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Decree.
5. Appeal papers.

ETHEL KUHN RUTLEDGE
v.
UNITED STATES. } No. 503, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Decree.
5. Appeal papers.

1540 CHARLES A. FROST vs. UNITED STATES. } No. 504, Docket "T."

1. Bill of complaint.
2. Answer.
3. Replication.
4. Deposition of Charles Frost.
5. Decree.
6. Appeal papers.

CELESTINE B. KUHN vs. UNITED STATES. } No. 505, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Deposition.
5. Decree.
6. Appeal papers.

STELLA KUHN vs. UNITED STATES. } No. 506, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Decree.
5. Appeal papers.

PHILEMON H. FROST v. UNITED STATES. } No. 507, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Deposition.
5. Stipulation.
6. Decree.
7. Appeal papers.

LEONARD FROST
v.
UNITED STATES. } No. 508, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. 2 stipulations.
5. Decree.
6. Appeal papers.

1541 MAGGIE E. ROCKWELL
v.
UNITED STATES. } No. 509, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Stipulation.
5. Decree.
6. Appeal papers.

MITCHELL MONETTE
v.
UNITED STATES. } No. 574, Docket "T."

1. Amended bill.
2. Answer.
3. Replication.
4. Stipulation.
5. Decree.
6. Appeal papers.

JOHN M. SLOAN
v.
UNITED STATES. } No. 579, Docket "T."

1. Bill (amended).
2. Answer.
3. Replication.
4. Deposition W. F. Springer.
5. Deposition T. L. Sloan.
6. Stipulation of evidence, Harry Baxter & Wm. F. Springer.
7. Decree.
8. Appeal papers.

Please put all of the foregoing in as one record, paging the same accordingly and make one certificate at the end.

THOS. L. SLOAN &
CHAS. E. CLAPP,
Att'ys for Complainants.

Endorsed: Filed Oct. 27, 1903, Geo. H. Thummel, clerk.

1542 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Geo. H. Thummel, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that in compliance with the precipe, a copy of which is found on page 1536 of this record, the foregoing record has been made and that the same is a true and faithful transcript of the pleadings and proceedings of record and on file in said court as mentioned in said precipe and as indicated in the foregoing index; and the same includes all the evidence offered and received, in the cases numbered as follows: 174, 265–266–267, 268, 269, 362, 363, 364, 365, 460, 461, 462, 462, 502, 503, 504, 505, 506, 507, 508, 509, 574 and 579 docket "T;" and that copies of the citation in each case, duly certified, has been lodged and remains in my said office as such clerk.

Witness my hand and seal of said circuit court at Omaha, in said district, this 27th day of October A. D., 1903.

[Seal United States Circuit Court, District of Nebraska,]

GEO. H. THUMMEL, *Clerk.*

Cost of this record $658.30 p'd by pl'ffs.

GEO. H. THUMMEL, *Clerk.*

Endorsed on cover: File Nos. 19,104 to 19,126, inclusive. Nebraska C. C. U. S. Term Nos. 453 to 475, inclusive. John M. Sloan *et al.*, appellants, *vs.* The United States *et al.*, and 22 other cases. Filed November 4th, 1903. File Nos. 19.104 to 19,126, inclusive. File No. 19,104. Nebraska C. C. U. S. Term No. 453. John M. Sloan *et al.*, appellants, *vs.* The United States *et al.* File No. 19,105. Term No. 454. Josephine Mitchell, appellant, *vs.* The United States *et al.* File No. 19,106. Term No. 455. Emeil Peters, appellant, *vs.* The United States. File No. 19,107. Term No. 456. Frank A. Peters, appellant, *vs.* The United States *et al.* File No. 19,108. Term No. 457. Walter V. Peters, appellant, *vs.* The United States *et al.* File No. 19,109. Term No. 458. Jacob Peters, appellant, *vs.* The United States *et al.* File No. 19,110. Term No. 459. Sarah F. McCreary, appellant, *vs.* The United States *et al.* File No. 19,111. Term No. 460. Jennie M. Arnold, appellant, *vs.* The United States *et al.* File No. 19,112. Term No. 461. Mitchell Monette *et al.*, appellants, *vs.* The United

States *et al.* File No. 19,113. Term No. 462. Cassie M. Karch, appellant, *vs.* The United States *et al.* File No. 19,114. Term No. 463. Thomas Barada, appellant, *vs.* The United States *et al.* File No. 19,115. Term No. 464. Mary Sailors, appellant, *vs.* The United States *et al.* File No. 19,116. Term No. 465. Artemesia Frost, appellant, *vs.* The United States. File No. 19,117. Term No. 466. Edward Kuhn, appellant, *vs.* The United States. File No. 19,118. Term No. 467. Ethel Kuhn Rutledge, appellant, *vs.* The United States. File No. 19,119. Term No. 468. Charles Frost, appellant, *vs.* The United States. File No. 19,120. Term No. 469. Celestine B. Kuhn, appellant, *vs.* The United States. File No. 19,121. Term No. 470. Stella Kuhn, appellant, *vs.* The United States. File No. 19,122. Term No. 471. Philemon H. Frost, appellant, *vs.* The United States *et al.* File No. 19,123. Term No. 472. Leonard Frost, appellant, *vs.* The United States *et al.* File No. 19,124. Term No. 473. Maggie E. Rockwell, appellant, *vs.* The United States *et al.* File No. 19,125. Term No. 474. Mitchell Monette, appellant, *vs.* The United States. File No. 19,126. Term No. 475. John M. Sloan, appellant, *vs.* The United States *et al.*

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JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

JOHN M. SLOAN ET AL., APPELLANTS, v. THE UNITED STATES ET AL. No. 453.

JOSEPHINE MITCHELL, APPELLANT, v. THE UNITED STATES ET AL. No. 454.

EMIL PETERS, APPELLANT, v. THE UNITED STATES. No. 455.

FRANK A. PETERS, APPELLANT, v. THE UNITED STATES ET AL. No. 456.

WALTER V. PETERS, APPELLANT, v. THE UNITED STATES ET AL. No. 457.

JACOB PETERS, APPELLANT, v. THE UNITED STATES ET AL. No. 458.

SARAH F. MCCHEARY, APPELLANT, v. THE UNITED STATES ET AL. No. 459.

JENNIE M. ARNOLD, APPELLANT, v. THE UNITED STATES ET AL. No. 460.

MITCHELL MONETTE ET AL., APPELLANTS, v. THE UNITED STATES ET AL. No. 461.

KARRIE M. KARCH, APPELLANT, v. THE UNITED STATES ET AL. No. 462.

THOS. BARADA, APPELLANT, v. THE UNITED STATES ET AL. No. 463.

MARY SAILORS, APPELLANT, v. THE UNITED STATES ET AL. No. 464.

ARTEMISIA FROST, APPELLANT, v. THE UNITED STATES. No. 465.

EDWARD KUHN, APPELLANT, v. THE UNITED STATES. No. 466.

ETHEL K. RUTLEDGE, APPELLANT, v. THE UNITED STATES. No. 467.

CHARLES FROST, APPELLANT, v. THE UNITED STATES. No. 468.

CELESTINE KUHN, APPELLANT, v. THE UNITED STATES. No. 469.

STELLA KUHN, APPELLANT, v. THE UNITED STATES. No. 470.

PHILEMON H. FROST, APPELLANT, v. THE UNITED STATES ET AL. No. 471.

LEONARD FROST, APPELLANT, v. THE UNITED STATES ET AL. No. 472.

MAGGIE E. ROCKWELL, APPELLANT, v. THE UNITED STATES ET AL. No. 473.

MITCHELL MONETTE, APPELLANT, v. THE UNITED STATES. No. 474.

JOHN M. SLOAN, APPELLANT, v. THE UNITED STATES ET AL. No. 475.

MOTION TO ADVANCE.

3115

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

JOHN M. SLOAN ET AL., APPELLANTS, *v.* THE UNITED STATES ET AL. No. 453.

JOSEPHINE MITCHELL, APPELLANT, *v.* THE UNITED STATES ET AL. No. 454.

EMIL PETERS, APPELLANT, *v.* THE UNITED STATES. No. 455.

FRANK A. PETERS, APPELLANT, *v.* THE UNITED STATES ET AL. No. 456.

WALTER V. PETERS, APPELLANT, *v.* THE UNITED STATES ET AL. No. 457.

JACOB PETERS, APPELLANT, *v.* THE UNITED STATES ET AL. No. 458.

SARAH F. MCCREARY, APPELLANT, *v.* THE UNITED STATES ET AL. No. 459.

JENNIE M. ARNOLD, APPELLANT, *v.* THE UNITED STATES ET AL. No. 460.

MITCHELL MONETTE ET AL., APPELLANTS, *v.* THE UNITED STATES ET AL. No. 461.

KASSIE M. KARCH, APPELLANT, *v.* THE UNITED STATES ET AL. No. 462.

THOS. BARADA, APPELLANT, *v.* THE UNITED STATES ET AL. No. 463.

MARY SAILORS, APPELLANT, *v.* THE UNITED STATES ET AL. No. 464.

ARTEMESIA FROST, APPELLANT, *v.* THE UNITED STATES. No. 465.

EDWARD KUHN, APPELLANT, *v.* THE UNITED STATES. No. 466.

ETHEL K. RUTLEDGE, APPELLANT, *v.* THE UNITED STATES. No. 467.

CHARLES FROST, APPELLANT, *v.* THE UNITED STATES. No. 468.

CELESTINE KUHN, APPELLANT, *v.* THE UNITED STATES. No. 469.

STELLA KUHN, APPELLANT, *v.* THE UNITED STATES. No. 470.

PHILEMON H. FROST, APPELLANT, *v.* THE UNITED STATES ET AL. No. 471.

LEONARD FROST, APPELLANT, *v.* THE UNITED STATES ET AL. No. 472.

MAGGIE E. ROCKWELL, APPELLANT, *v.* THE UNITED STATES ET AL. No. 473.

MITCHELL MONETTE, APPELLANT, *v.* THE UNITED STATES. No. 474.

JOHN M. SLOAN, APPELLANT, *v.* THE UNITED STATES ET AL. No. 475.

MOTION TO ADVANCE.

The appellants in the above-entitled causes, claiming that they are in part of Indian blood and members of the Omaha tribe, instituted suits in the circuit court of the United States for the district of Nebraska, under the provisions of the act of

Congress approved February 6, 1901 (31 Stat., 760), for the purpose of compelling the Government to allot to them certain lands in the Omaha Indian Reservation, Nebraska.

The principal question presented is whether, under section 5 of the act of August 7, 1882 (22 Stat., 341), which provides for the allotment of Indian lands, the appellants are entitled to claim allotments in severalty within the Omaha Reservation.

The circuit court held that the plaintiffs had failed to show themselves entitled to the benefit of the allotment provisions of that act, and this appeal is taken to review the judgment of the circuit court.

I am advised that all of the above-entitled causes are identical as to the question of law involved, and it may be that they can be heard together as one case. In view of the large number of parties interested and the public nature of the question, in which an early decision by this court is deemed important, I move that the cases be advanced on the docket and set down for hearing on such day as may be convenient to the court.

Should this motion be granted, I suggest that the cases be set for hearing early in March next.

Notice of this motion has been served on opposing counsel.

HENRY M. HOYT,
Solicitor-General.

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IN THE SUPREME COURT
OF THE
UNITED STATES

Office Supreme Court
FILED
MAR 7 19
JAMES H. McKENNEY

JOHN M. SLOAN, ET AL.,
APPELLANTS.

VS.

THE UNITED STATES OF AMERICA, ET AL.,
APPELLEES.

AND TWENTY-TWO OTHER CASES, BEING NOS. 453 TO 475, INCLUSIVE.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF OF APPELLANTS.

CHARLES E. CLAPP,
THOMAS L. SLOAN,
H. C. BROME,
ANDERSON & KEEFE,
Attorneys for Appellants.

W. S. SUMMERS,
JOHN L. WEBSTER,
HENRY M. HOYT, SOLICITOR GENERAL OF THE UNITED STATES,
Attorneys for Appellees.

3115

IN THE SUPREME COURT
OF THE
UNITED STATES.

JOHN M. SLOAN, ET AL.,
APPELLANTS.

VS.

THE UNITED STATES OF AMERICA, ET AL.,
APPELLEES.

AND TWENTY-TWO OTHER CASES, BEING NOS. 453 TO 475, INCLUSIVE.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF OF APPELLANTS.

STATEMENT OF CASES.

In the year 1901 twenty-five several claimants for allotments of land upon the Omaha Indian Reservation filed their separate bills of complaint in the Circuit Court of the United States for the District of Nebraska to obtain such allotments. The issues were made up in each case. A large portion of the evidence taken, being applicable to all the cases, by agreement of counsel they were tried

together (page 18 of record), but a separate decree was entered on the 8th day of November, 1902, in each case.

In two of the cases decrees were entered for complainants, finding they were entitled to allotments as prayed. In the twenty-three remaining cases the relief sought was denied. A separate assignment of errors was filed in each case by the defeated party, and on the 13th day of October, 1903, an appeal was allowed in each case and the record brought to this court, being Nos. 453 to 475 here. The jurisdiction of the Circuit Court was invoked pursuant to the Act of Congress of August 15, 1894, as amended on February 6, 1901. So much of this act as is material in the consideration of these cases reads as follows:—

> "That all persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence and prosecute or defend any action, suit or proceeding in relation to their right thereto in the proper circuit court of the United States; and said circuit courts are hereby given jurisdiction to try and determine any action, suit or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part, of Indian blood or descent, to any allotment of land under any law or treaty, and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant; and the judgment

or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands now held by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency; *Provided,* That the right of appeal shall be allowed to either party as in other cases." (31 U. S. 760.)

The lands in controversy are within the boundary of the Omaha Indian Reservation, in Thurston county, in the State of Nebraska. At the time of the Louisiana Purchase in 1803, the Omaha tribe of Indians was located upon and in possession of land lying upon both sides of the Missouri river, in what is now the states of Nebraska and Iowa.

The rights of appellants in these cases depend upon the construction to be given to portions of the several treaties made by the General Government with the Omaha tribe, and acts of Congress relating thereto. We print herewith so much of the several treaties and Congressional enactments as are relevant to the issues presented in these cases. In 1830 a treaty was made between the United States and various tribes of Indians, including the Omahas. By virtue of which large tracts of land theretofore occupied by these tribes, whether separately or in common, were ceded to the United States, and in return for such cession various provisions for the benefit of the Indians were made by the Government. The only provisions of this treaty relevant to the controversy here are articles ten and twelve.

"Article X. The Omahas, Ioways and Ottoes for themselves, and in behalf of the Yanckton and the Santie bands of Sioux, having earnestly requested that they might be permitted to make some provisions for their half-breeds, and particularly that they might bestow upon them the tract of country within the following limits, to-wit: Beginning at the mouth of the Little Ne-mohaw River, and running up the main channel of said river to a point which will be ten miles from its mouth in a direct line; from thence in a direct line to strike the Grand Ne-mohaw ten miles above its mouth, in a direct line (the distance between the two Ne-mohaws being about twenty miles); thence down said river to its mouth; thence up, and with the meanders of the Missouri River to the point of beginning, it is agreed that the half-breeds of said tribes and bands may be suffered to occupy said tract of land; holding it in the same manner, and by the same title that other Indian titles are held; but the President of the United States may hereafter assign to any of the said half-breeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section, of six hundred and forty acres to each individual. And this provision shall extend to the cession made by the Sioux in the preceding article.

"Article XII. It is agreed that nothing contained in the foregoing articles shall be so construed as to affect any claim, or right in common, which has heretofore been held by any tribes, parties to this treaty, to any lands not embraced in the cession herein made; but that the same shall be occupied and held by them as heretofore."

TREATY WITH THE OMAHA, 1854.

Articles of agreement and convention made and concluded at the City of Washington, this sixteenth day of March, one thousand eight hundred and fifty-four, by George W. Manypenny, as commissioner on the part of the United States, and the following named chiefs of the Omaha tribe of Indians, viz.: Shon-ga-ska, or Logan Fontenelle; E-sta-mah-za, or Joseph Le Flesche; Gra-tah-nah-je, or Standing Hawk; Gah-he-ga-gin-gah, or Little Chief; Ta-wah-gah-ha, or Village Maker; Wah-no-ke-ga, or Noise; So-da-nah-ze, or Yellow Smoke; they being thereto duly authorized by said tribe.

"Article 1. The Omaha Indians cede to the United States all their lands west of the Missouri River, and south of a line drawn due west from a point in the center of the main channel of said Missouri River due east of where the Ayoway River disembogues out of the bluffs, to the western boundary of the Omaha country, and forever relinquish all right and title to the country south of said line: Provided, however, That if the country north of said due west line, which is reserved by the Omahas for their future home, should not on exploration prove to be a satisfactory and suitable location for said Indians, the President may, with the consent of said Indians, set apart and assign to them, within or outside of the ceded country, a residence suited for and acceptable to them. And for the purpose of determining at once and definitely, it is agreed that a delegation of said Indians, in company with their agent, shall, immediately after the ratification of this instrument, proceed to examine the country hereby reserved, and if it please the delegation, and the Indians in counsel

express themselves satisfied, then it shall be deemed and taken for their future home; but if otherwise, on the fact being reported to the President, he is authorized to cause a new location, of suitable extent, to be made for the future home of said Indians, and which shall not be more in extent, than three hundred thousand acres, and then and in that case, all of the country belonging to said Indians north of said due west line, shall be and is hereby ceded to the United States by the said Indians, they to receive the same rate per acre for it, less the number of acres assigned in lieu of it for a home, as now paid for the land south of said line.

Article 4. In consideration of and payment for the country herein ceded, and the relinquishments herein made, the United States agree to pay to the Omaha Indians the several sums of money following, to-wit:

First.—Forty thousand dollars, per annum, for the term of three years, commencing on the first day of January, eighteen hundred and fifty-five.

Second.—Thirty thousand dollars per annum, for the term of ten years, next succeeding the three years.

Third.—Twenty thousand dollars per annum, for the term of fifteen years, next succeeding the ten years.

Fourth.—Ten thousand dollars per annum, for the term of twelve years, next succeeding the fifteen years.

All which several sums of money shall be paid to the Omahas, or expended for their use and benefit, under the direction of the President of the United States, who may from time to time determine, at his discretion, what proportion of the annual payments,

3116

in this article provided for, if any, shall be paid to them in money, and what proportion shall be applied to and expended, for their moral improvement and education; for such beneficial objects as in his judgment will be calculated to advance them in civilization; for buildings, opening farms, fencing, breaking land, providing stock, agricultural implements, seeds, etc.; for clothing, provisions and merchandise; for iron, steel, arms and ammunition; for mechanics, and tools, and for medical purposes.

Article 5. In order to enable the said Indians to settle their affairs and to remove and subsist themselves for one year at their new home, and which they agree to do without further expense to the United States, and also to pay the expenses of the delegation who may be appointed to make the exploration provided for in article first, and to fence and break up two hundred acres of land at their new home, they shall receive from the United States, the further sum of forty-one thousand dollars, to be paid out and expended under the direction of the President, and in such manner as he shall approve.

Article 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not ex-

ceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force until a state constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the state shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. And the residue of the land hereby reserved, or of that which may be selected in lieu thereof after all the Indian persons or families shall have had assigned to them permanent homes, may be sold for their benefit, under such laws, rules or regulations,

3116

as may hereafter be prescribed by the Congress or President of the United States. No State Legislature shall remove the restrictions herein provided for, without the consent of Congress.

Article 11. The Omahas acknowledge themselves indebted to Lewis Sounsosee (a half breed), for services, the sum of one thousand dollars, which debt they have not been able to pay, and the United States agree to pay the same."

On March 6th, 1865, another treaty was entered into between the United States and the Omaha Tribe of Indians, article IV reading as follows:—

"Article IV. The Omaha Indians, being desirous of promoting settled habits of industry and enterprise amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, including their half or mixed blood relatives now residing with them, to be cultivated and improved for their own individual use and benefit, it is hereby agreed and stipulated that the remaining portion of their present reservation shall be set apart for said purposes; and that out of the same there shall be assigned to each head of a family not exceeding one hundred and sixty acres, and to each male person, eighteen years of age and upwards, without family, not exceeding forty acres of land—to include in every case as far as practicable, a reasonable proportion of timber; six hundred and forty acres of said lands, embracing and surrounding the present agency improvements, shall also be set apart and appropriated to the occupancy and use of the agency for said Indians. The lands to be

so assigned, including those for the use of the agency, shall be in as regular and compact a body as possible, and so as to admit of a distinct and well defined exterior boundary. The whole of the lands, assigned and unassigned, in severalty shall constitute and be known as the Omaha Reservation, within and over which all laws passed or which may be passed by Congress, regulating trade and intercourse with the Indian tribes, shall have full force and effect, and no white person, except such as shall be in the employ of the United States, shall be allowed to reside or go upon any portion of said reservation without the written permission of the Superintendent of Indian Affairs or the agent for the tribe. Said division and assignment of lands to the Omahas in severalty shall be made under the direction of the Secretary of the Interior, and when approved by him shall be final and conclusive. Certificates shall be issued by the Commissioner of Indian Affairs for the tracts so assigned, specifying the names of the individuals to whom they have been assigned respectively, and that they are for the exclusive use and benefit of themselves, their heirs, and descendants; and said tracts shall not be alienated in fee, leased, or otherwise disposed of except to the United States or to other members of the tribe, under such rules and regulations as may be prescribed by the Secretary of the Interior, and they shall be exempt from taxation, levy, sale or forfeiture, unless otherwise provided for by Congress."

U. S. Statutes at Large, Vol. 14, p. 667.

Sections 5 and 6 of the Act of Congress of August 7, 1882, are as follows:—

"Sec. 5. That with the consent of said Indians as aforesaid the Secretary of the Interior be and he

is hereby authorized, either through the agent of said tribe or such other porson as he may designate, to allot the lands lying east of the right of way granted to the Sioux City and Nebraska Railroad Company under the agreement of April 19th, 1880, approved by the Acting Secretary of the Interior July 27th, 1880, in severalty to the Indians of said tribe in quantity as follows: To each head of a family, one-quarter of a section; to each single person over eighteen years of age, one-eighth of a section; to each orphan child, under eighteen years of age, one-eighth of a section; and to each other person under eighteen years of age, one-sixteenth of a section; which allotments shall be deemed and held to be in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for which, for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided; *Provided*, That any Indian to whom a tract of land has been assigned, and certificate issued, or who was entitled to receive the same, under the provisions of said fourth article and who has made valuable improvements thereon, and any Indian who, being entitled to a assignment and certificate under said article has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract shall have a preference right to select the tract upon which his improvements are situated, for allotment under the provisions of this section: *Provided Further*, That all allotments made under the provisions of this section shall be selected by the Indians, heads of families selecting for their minor children, and the agent shall select for

each orphan child; after which the certificates issued by the Commissioner of Indian Affairs as aforesaid shall be deemed and held to be null and void.

"Sec. 6. That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indians to whom such allotments shall have been made, or in case of his decease, of his heirs, according to the laws of the State of Nebraska, and that at the expiration of said period, the United States will convey the same by patent to said Indian or his heir as aforesaid, in fee discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void; *Provided*, That the law of descent and partition in force in the said state shall apply thereto after patents therefor have been executed and delivered."

22 U. S. Statutes, 341.

The Indian Appropriation Act, approved March 3, 1893, contained the following provision relative to these Indians:—

"That the act of Congress, approved August seventh, eighteen hundred and eighty-two, entitled, 'An act to provide for the sale of a part of the reser-

vation of the Omaha tribe of Indians in the State of Nebraska, and for other purposes,' be and the same is hereby amended so as to authorize the Secretary of the Interior, with the consent of the Indians of that tribe, to allot in severalty, through an allotting agent of the Interior Department, to each Indian woman and child of said tribe born since allotments of land were made in severalty to the members thereof under the provisions of said act, and now living, one-eighth of a section of the residue lands held by that tribe in common, instead of one-sixteenth of a section, as therein provided, and to allot in severalty to each allottee under said act, now living, who received only one-sixteenth of a section thereunder, an additional one-sixteenth of a section of such residue lands: *Provided*, That the allotments so made shall be subject to the same conditions, restrictions and limitations provided for in sections six, seven and eight of said act touching allotments and patents to allottees therein mentioned. And provided, That the expenses incurred in making the allotments hereby authorized shall be defrayed out of the funds appropriated for surveying and allotting Indian reservations."

FAMILY HISTORY.

All the complainants in the cases numbered 460, 461, 462 and 474 are descendants of La-ta-da-we, an Omaha Indian woman of full blood. (Pages 488 and 489 of Record.)

All the other complainants are descendants of Taegleha Hacienda, a full blood Omaha Indian woman. (Pages 62 to 65, inclusive, 336 to 341 inclusive, of Record. Table page 244.)

La-ta-da-we was married to Francis Bono, a white man, in the year 1839, in the Indian country. There was born to them a daughter, Mary Bono, who married Mitchell Monette, a white man. Jennie M. Arnold, nee Monette, Mitchell Monette and Cassie M. Karch, nee Monette, are the children of Mary Bono and Mitchell Monette. (Pages 488 and 489 of Record.)

Taegleha Hacienda was married to Michael Barada, and the table showing their descendants is at page 244 of the Record.

The children of this marriage were Margaret, who subsequently married Thomas Sloan, Antoine Barada, Mary Jane, whose first husband was Francis Cabana, and whose second husband was Louis Paul, and Popoin, whose husband was Joshua Pilcher. All of the descendants of Taegleha Hacienda and of La-ta-da-we are members of the Omaha tribe of Indians and entitled to allotments under the treaties and acts of Congress relating thereto. All of these descendants are similarly circumstanced.

The descendants of Popoin Barada and Mary Jane Paul have all been recognized by the department and have received allotments. A portion of the descendants of Antoine Barada have been recognized and allotments have been made to them. Certain of the descendants of Antoine Barada, and all of the descendants of Margaret Barada have been denied allotments. (Page 244 of Record.) The claims of the persons thus denied are involved in these appeals.

It is not disputed there is within the limits of the Omaha reservation sufficient land for these claimants and for every other member of the tribe entitled thereto. The

3116

appellants in each case in the manner prescribed by the department in that behalf made selection of lands for allotment, and where not prevented by the Department are occupying and improving such lands.

Photographs showing the homes erected and improvements made by these complainants are upon file as original exhibits. The complainants are cultivating the land, educating their children and following the wishes of the General Government in this behalf.

USAGE AND CUSTOM.

It was the usage and custom among the Omaha Indians, and it is now the custom among them to enroll and recognize as members of the tribe any children born to a member of the tribe. A child of a white man not a member of the tribe and of an Indian mother a member of the tribe, is enrolled and recognized as member of the tribe.

Under this usage and custom all of the appellants are members of the tribe.

That this is the usage and custom is shown by the following reference to the record:

The first annuity rolls of the Omaha tribe of Indians made in 1855, show the names of half-breed Indians and their children paid and recognized as members of the tribe. (Pages 35 to 51 of Record.)

List of children of white men allotted lands on the Omaha Reservation to the number of 33. (Page 53 of Record.)

List of annuity payments to half-breed and mixed

blood Indians of the Omaha tribe, paid as members of the tribe, and ranging in ages from 2 months to 68 years, to the number of 79. (Pages 54 and 55 of Record.)

The following is a list of children of white fathers and mixed blood Indian women who have been allotted land, which children were born off the reservation, and at the time of their birth neither parent was borne upon the tribal rolls:

Elsie Fuller.
Susan E. Fuller.
Louis Fuller.
Anna L. Fuller.
George T. Fuller.
Charles E. Fuller.
Isabel Fuller.
George T. Scott.
Wesley Scott.
Eliza Campbell.
Ida Campbell.
Wm. H. Campbell.
Pearly Campbell.
Florence Campbell.
Julia Campbell.

List of children born to white women and mixed blood Indian fathers living off the reservation at the time and when neither parent was carried upon the tribal rolls:

Josephine Filson.
Charles Pilcher.
Mary V. Pilcher.
Mary Cabana.
Francis Cabana.
Reuben Cabana.

The proof shows the above list to be true and correct. (Pages 232 and 233 of the Record.)

TESTIMONY OF WM. F. SPRINGER.

Ques. "Is it not the duty of the agent to enter up the name of such child whether he cares to approve of it or not under the custom?"

Ans. "Well, I do not know to that extent, but I know that where a parent, either mother or father, is a

member of the tribe and has a child born to them, that it has been the custom to put that child upon the roll as recognized member of the tribe." (Page 127 of Record.)

CHAS. P. MATHEWSON, Agent Omaha Tribe Indians.

Ques. "During the past twelve years what has been the custom in regard to the enrollment of those children born of Indian women of full blood, or part Indian blood being issued by white men?"

Ans. "They have been placed upon the rolls."

Ques. "Upon what representation to you or through agent during that period?"

Ans. "The same as other members of the tribe."

Stipulation of Anna Cabana. (Pages 76, 77, 78 of Record.)

Lists of allotments of children of white men and mixed blood Indian women. (Pages 79, 80, 81, 82, 83 of Record.)

As to showing the custom of recognition and enrollment of numerous children of white fathers, we call attention to the testimony of Wm. F. Springer. (Pages 121 to 125 of Record.)

Children born off the reservation and recognized as members of the tribe.

Testimony of Antoine Cabana. (Pages 107 to 116 of Record.)

The opposition to these claimants is not founded on any valid or reasonable objection to them, as is shown by the testimony of two witnesses called by the Government.

(Richard) Charles Robinson (whose Indian name is Munca-wa-tha), a witness produced in behalf of the defendants, being first duly sworn, testified as follows:

Hiram Chase, being duly sworn, acted as interpreter.

Q. Have the Omaha Indians as a tribe been opposed to Mary Monette and the other persons who have these pending suits being adopted in the tribe or receiving allotments of lands?

A. The people have said that they did not want to take them into the tribe, and they do not know them.

Q. Did the Indian council make known their objections to these people who have these pending suits to the allotting agent, Fletcher, and to the allotting agent, Rankin?

A. He says that one reason of not taking these people in was Miss Fletcher's influence and cause.

Q. Do you know Wood Tick?

A. Yes, sir; he is my friend.

Q. When you called on Mrs. Monette, she spoke to you in the Omaha language, did she not?

A. Yes, sir.

Q. And you knew her mother, did you not, La-ta-da-we?

A. Yes, sir.

Q. You want this Omaha woman cut off of her rights for allotment, do you?

A. Yes, sir.

Q. You felt that way for a good many years?

A. Yes, sir. (Page 500 of Record.)

Hiram Chase, a witness, produced in behalf of the defendants, first duly sworn, deposes and says as follows:

Q. About that time, Mr. Chase, you were interested with Tom Sloan and others, in trying to get some allotments for the mixed bloods, were you not?

A. Not just at that time, but after Mr. Sloan and Aunt Margaret Sloan, as we used to call her, were here, and I had very friendly relations with them on account of a statement made to me in our Iudian family that she was actually related to our ancestors on the Indian side, that she had come from the same Indian stock that I had, and my part in the matter has been this, that under those influences and relations that I had with the Sloans on account of my kinship with them, seeing that other people from the Nemaha reservation had lands, that were not here in 1865, I looked on it as a matter of being morally unjust. I did not look at the legal phase of it at that time, and I did not care, and it was through those influences that impelled me to take the stand that I did at these times, not knowing all the legal phases that have come up with reference to these matters.

Q. And it was that interest which you felt for Margaret Sloan that you above described that in a measure prompted your personal feeling toward Miss Fletcher?

A. A good deal of it; there is not only that Mr. Webster. There is my own affairs. It was over partiality with certain families here among the Omahas which I think were not as much entitled to regard from the officials of the Government as even myself. I do not state it as a matter of boast, but as a matter of fact; it was

over partiality with those families to disregard entirely the families that had descended from actual Omaha Indians.

Q. That had reference to the mixed bloods and not as against the full blood Omaha Indians?

A. Yes, sir; I want the thing amicably settled, and have the mixed bloods and the full bloods united in one body, and it would be a benefit to both people, mixed bloods as well as the others. That is one view I take of it.

Q. You were looking at it from a philosophical standpoint?

A. Some, I do not know as it cuts any figure. (Pages 505 and 506 of Record.)

ALLOTTEES UNDER THE TREATY OF 1830 HAVE RECEIVED ALLOTMENTS UNDER SUBSEQUENT ACTS.

The following is a partial list of mixed bloods who received allotments on the Nemaha reservation under the provisions of article ten of the treaty of July 15th, 1830, who have since received allotments under later acts:

Treaty of 1830.	Act of 1882.
Henry Fontenelle.	Henry Fontenelle.
L. Albert Fontenelle.	Lucien Albert Fontenelle.
Susan Neals.	Susan Neals.
Louis Saunsoci.	Louis Saunsoci.
Susette La Flesche.	Susette Tibbles.
Emily Barnaby.	Emily Campbell.
Julia Barada, daughter of Antoine Barada.	Julia Provo.
Mary Jane Paul, sister of Margaret Sloan.	Mary Jane Paul.
Madeline Paul, niece of Margaret Sloan.	Madeline Scott.
Eliza Paul, niece of Margaret Sloan.	Eliza Wheeler.
Elizabeth Paul, niece of Margaret Sloan.	Elizabeth Baylis.
Louisa Paul, niece of Margaret Sloan.	Louisa Atkins.
Prisa Paul, niece of Margaret Sloan.	Theresa Fuller.
Antoine Paul, nephew of Margaret Sloan.	Antoine Cabana.
John Pilcher, nephew of Margaret Sloan.	John Pilcher.

Treaty of 1830.	Act March 3, 1893.
Mary La Flesche.	Mary La Flesche.
Louis Neal.	Louis Neal.

Clara Barada, daughter of Antoine Barada, was allotted on the Nemaha Reservation. She has been since allotted as Clara Dupuis and all her children. That the allotments to them are on the Iowa Reservation.

John Dupuis and Francis Dupuis, who were allotted on the Nemaha Reservation, have since been allotted on the Iowa Reservation.

Daniel Godfrey, who was allotted land on the Nemaha Reservation, has since been allotted land on the Iowa Reservation.

Emily Fontenelle, who was allotted land on the Nemaha Reservation, has been allotted other lands on the Pawnee Reservation.

Antoine Robidoux, who was allotted lands on the Nemaha Reservation, has since been allotted lands on the Otoe Reservation, in Indian Territory.

Leon Connoyer, who was allotted lands on the Nemaha Reservation, has since been allotted lands on the Rosebud Sioux Reservation in South Dakota.

That Henry Didier, who was allotted lands on the Nemaha Reservation, has since, with his children, been allotted land on the Rosebud Sioux Reservation. His wife is a white woman.

That John Cordier and Charles Cordier, who received allotments on the Nemaha Reservation, have since received allotments on the Rosebud Sioux Reservation. (See Record, pages 81 and 82.)

The following names, taken from the schedule approved by the United States Indian Agent, December 23rd, 1870, being a list of the assignments of land in severalty

under the provision of the fourth article of the treaty of March 6th, 1865, being pages 171 to 183, inclusive, of the Record, are persons who received allotments under the tenth article of the treaty of July 15th, 1830:

No. 59, Henry Fontenelle.	No. 324, Theresa Fuller.
No. 69, John De Roine.	No. 328, Madaline Scott.
No. 98, Rosalie Spafford.	No. 329, Elizabeth Moncravie
No. 254, Louis Saunsoci.	No. 330, Lizzie Paul.
No. 320, Antoine Cabana.	No. 331, Louisa Paul.

That the last six named persons were not residing upon the Omaha Reservation on the date of March 6th, in 1865, nor at any time during that year, as shown by the Record, page 77. That the list upon page 82 of the list shows allotments to the persons named under the treaty of 1830.

The consent of the Omaha tribe to the allotting of their lands pursuant to the act of 1882, was given in May, 1883. (See Record, pages 366 and 368.)

The facts respecting the individual claimants, briefly stated, are as follows:

CASE NO. 453.

MARGARET SLOAN, a daughter of Taeglaha Hacienda, was born in 1805. She was married to Thomas Sloan in 1830 and was at the Omaha Agency from 1855 to 1857, when she made a selection of land for allotment on the Nemaha reservation. Subsequently, in 1858, and during the years of 1858 and 1859, she lived with her husband and family in a home built by them upon the Omaha reservation, removing to the Nemaha reservation in 1859

and residing with her family there until 1881. She went back to the Omaha reservation in 1881 and resided there until her death, which occurred in December, 1898. She was upon the Omaha reservation and was actually residing there when the act of 1882 became operative. (Page 63, Record.)

This suit was brought in her own name to recover her allotment. After her death it was revived in the name of her heirs at law. The court below denied relief upon the construction that her right to an allotment did not descend to her heirs, and because she had received an allotment upon the Nemaha reservation. (Page 258, Record.)

It appears without contradiction that upon the first annuity role prepared for a per capita payment to the members of the Omaha Tribe of Indians, Margaret Sloan and her family were enrolled. (See Record, page 35.) Not being present at the general payment, when the other members of the tribe were paid, she and another half-breed woman, with their families, were paid upon a separate supplemental roll, under which she was certified to by the chiefs of said tribe as being a member of the Omaha Tribe of Indians. (See pages 35 and 36 of the Record.) She and her children were subsequently recognized in the payment of per capita annuity payments to the members of the Omaha Tribe of Indians, as shown upon pages 37, 38, 39, 40, 41, 44 and 48 of the Record. That subsequently in the year 1875, Artemesia Frost, the daughter of Margaret Sloan, and her grandson, were recognized as members of the Omaha Tribe of Indians, and paid their share of the per capita annuity payment, as shown by the record and roll on page 51. In the year 1890, Margaret Sloan

and her grandson, Thomas L. Sloan, received their per capita share of the tribal grass money, it being paid to them under the direction of the Council of the Omaha Tribe of Indians by persons known as the "Grass Commissioners." (Page 229 of the Record.)

In the year 1891, at a payment of annuity money made by Agent Spencer, an annuity was paid to Thomas L. Sloan and Margaret Sloan; that prior to this time in the year 1885 an issue of annuity goods was made to Margaret Sloan. (Page 66 of Record.)

That the land upon which Margaret Sloan made her home was selected by her in the year 1881, during which year a part of the land was broken up and cultivated. That during the year subsequent the land was improved by the building of a house, barn, shedding, digging a well, and setting out and planting trees. That this selection and improvement of the land was prior to the passage of the Act of Congress of August 7th, 1882. That subsequently, in the year 1893, other land claimed by Margaret Sloan was broken up and improved at a cost of over $1,700, as shown by pages 74 and 75 of the Record.

CASE NO. 475.

JOHN M. SLOAN is a son of Margaret Sloan and Thomas Sloan, and was a member of Margaret Sloan's family at the time various annuity payments were made to her and family heretofore referred to. He was also a member of Margaret Sloan's family at the time they established a home upon the present Omaha reservation, and he lived with the family there during the years 1858 and

1859. The members of the Margaret Sloan family are shown in the testimony of Artemesia Frost (page 90, Record), and during the time Margaret Sloan and her family were living upon the reservation John Sloan attended the Omaha Mission School, erected and maintained for the exclusive use of the Indian youth of the Omaha tribe. (Record, page 91.) John Sloan received an allotment of 320 acres upon the Nemaha reservation. He was an engineer, and in following his work was required to be away from the reservation; that in the year 1896, before starting to Alaska, he left a general power of attorney with his wife, Mrs. Malissa Sloan, under whose authority and direction the lands claimed in his bill were selected and improved and occupied. (See page 925 of the Record; also pages 928 and 929.)

CASE NO. 465.

ARTEMESIA FROST is the daughter of Margaret Sloan and Thomas Sloan and was recognized as a member of the Omaha tribe in the various annuity payments made to Margaret Sloan and family hereinbefore mentioned. She resided with her mother and family upon the Omaha reservation in the years 1858 and 1859, and received an allotment of land upon the Nemaha reservation. In the year 1874 Artemesia Frost, with her husband and family, removed to and established a home and residence upon the Omaha reservation; that while so residing upon the reservation she was recognized as a member of the Omaha Tribe of Indians by the payment of annuities to herself and child, Philemon H. Frost. The annuity payment is

shown upon page 51 of the Record. This payment is further testified to by her husband, Leonard L. Frost (pages 186 and 187 of the Record), and by Mrs. Artemesia Frost upon page 92 of the Record. All the children of Artemesia Frost have attended the various Indian schools provided for the exclusive education of the Indian youth and maintained by the United States Government, and by the Omaha Tribe of Indians, as shown by the Record. (Pages 100, 101, and pages 739 and 740.)

CASE NO. 468.

CHARLES FROST is a son of Artemesia Frost and one of the children hereinbefore referred to as having attended school at the Omaha Indian Agency, a school maintained exclusively for the use of the Omaha Indian youth. (See pages of Record, 739 and 740.) He was also an attendant at the Indian school known as "Haskell Institute," at Lawrence, Kansas, and was further educated at Hampton Institute, at Hampton, Va., where he was sent and maintained at the expense of the United States Government. (Record, pages 739 and 740.)

CASE NO. 471.

PHILEMON H. FROST, appellant, is a son of Artemesia Frost, and the oldest child of said Artemesia Frost. He was regarded as a member of the Omaha Tribe of Indians and paid, with his mother, at the annuity payment made in the year 1875. (Page 51.) He was an attendant at the Indian school at Haskell Institute, Lawrence, Kansas. (Page 740 of the Record.)

CASE NO. 472.

LEONARD FROST, appellant, is a son of Artemesia Frost, and one of the children hereinbefore referred to as attendants at the Indian school at Haskell Institute, Lawrence, Kansas, and who has selected land for allotment upon the Omaha reservation. (Page 740, Record.)

CASE NO. 459.

SARAH F. McCREARY, appellant, is a daughter of Artemesia Frost, and one of the children hereinbefore referred to as having attended the Indian school known as Haskell Institute, at Lawrence, Kansas, maintained by the Government for the exclusive use and education of Indian youth. That said appellant selected land upon the Omaha Reservation as the head of a family under the provisions of the fifth section of the Act of Congress of August 7th, 1882. (Page 740 of the Record.)

CASE NO. 463.

Thomas Barada is the son of Antoine Barada, being son of a full blood Omaha Indian woman, and is a member of the family of Antoine Barada, who was recognized, with his family, as a member of the Omaha Tribe of Indians, and who participated in the annuities paid per capita to the members of the Omaha Tribe of Indians, as shown in the several annuity rolls found on pages 37, 38, 39, 40, 41, 42, 43 and 44 of the Record. Antoine Barada is the same person who appears on the roll under the name of Mu-shu-num-pa-she, which identification between the names are

stipulated to upon page 66 of the Record. Thomas Barada did not obtain an allotment of land upon the half-bred reservation under the provisions of the treaty of July 15th, 1830, for he was born after the assignment and approval of the allotments on that reservation. He has been a resident upon the Omaha reservation since 1888, at which time he selected land as the head of a family. This land he has ever since occupied and has made valuable improvements thereon. (Page 338 of the Record.)

CASE NO. 469.

CELESTINE B. KUHN is a daughter of Antoine Barada and a member of the family which received annuity moneys as hereinbefore referred to in the case of Thomas Barada. She received an allotment of land upon the Nemaha half-breed reservation. This appellant, with her mother, moved to the Omaha Reservation in the year 1863 for the purpose of getting annuity money due her family, or her father's family. (Page 366 of the Record.) Celestine B. Kuhn came to the Omaha Reservation in the spring of 1883 and she and her family were residents upon the Omaha Indian Reservation at the time the Act of Congress of August 7th, 1882, went into effect. The consent of the Omaha Tribe of Indians was necessary to give said Act of Congress effect (Page 366, Record), and she was living upon the reservation before such consent was given. She selected land as the head of a family under the provisions of the fifth section of said act and is now in possession, use and control of said land. The land, when selected by her, was wild, unoccupied and unimproved land,

but since such time she has cultivated it and has built thereon houses, barns, shedding, corn cribs and various other necessary out-buildings to a total value of about $2,500.00. (See picture filed as original exhibit.) Her children had their tuition paid by the Indian office. (Page 762, Record.)

CASE NO. 467.

ETHEL KUHN RUTLEDGE is a daughter of Celestine B. Kuhn and was a resident upon the Omaha Reservation with her mother's family in the year 1883, prior to the Act of Congress of August 7th, 1882, going into effect by the Indians giving their consent thereto. She has been ever since and is now a resident upon the Omaha Reservation and has selected land to the amount of eighty acres. (Page 366, Record.)

CASE NO. 466.

EDWARD KUHN is a son of Celestine B. Kuhn, and was a member of his mother's family, living upon the Omaha Indian Reservation prior to the time the Act of Congress of August 7th, 1882, went into effect by the Indians giving their consent thereto. He has been ever since and is now a resident upon the reservation, and is occupying the land selected by him. Which land he is entitled to under the provisions of said act. (Page 366 of Record.)

CASE NO. 470.

STELLA KUHN is a daughter of Celestine B. Kuhn and was a member of her mother's family, living upon

the Omaha Indian Reservation prior to the time the Act of Congress of August 7th, 1882, went into effect by the Indians giving their consent thereto. She has ever since been a resident upon the reservation, occupying the land selected by her. Which land she is entitled to under the provisions of said act. (Page 366, Record.)

CASE NO. 456.

FRANK A. PETERS is a son of Euphrasia Peters, nee Barada, who was a daughter of Antoine Barada. Euphrasia Peters was a member of the family of Antoine Barada and as a member of such family received her share of the per capita annuity moneys paid to the members of the Omaha Tribe of Indians under the provisions of the treaty of March 16th, 1854, such payments being hereinbefore referred to in the case of Thomas Barada, Case No. 463. Euphrasia Peters, nee Barada, received an allotment of land upon the Nemaha Reservation under the provisions of the tenth article of the treaty of July 15th, 1830. Frank Peters selected land upon the Omaha Reservation in the year 1881, and the land he now occupies and has occupied continuously since 1885, is a part of the same land selected in 1881. Frank A. Peters has made many valuable and lasting improvements upon the land claimed by him by erecting buildings thereon, the planting of shade and ornamental trees, orchard trees and small fruits. In all of the value of about $3,000. (Pages 338 and 339 of the Record.) So also photograph, an original exhibit. The children of Frank A. Peters were educated in the district schools upon the reservation. He was allowed, out

of the Indian educational fund, per capita payment to the district for this purpose. (Page 358 of the Record.)

CASE NO. 454.

JOSEPHINE MITCHELL is a daughter of Euphrasia Peters, and was, in the year 1883, a resident upon the Omaha Reservation. This residence was established as a member of her mother's family prior to the taking effect of the Act of Congress of August 7th, 1882, by the Indians giving their consent thereto. She selected land upon the Omaha Indian Reservation in accordance with said act of August 7th, 1882, and is now living thereon. She has erected many valuable and lasting improvements upon the land thus selected. (Page 368, Record.)

CASE NO 455.

EMEIL PETERS is a son of Euphrasia Peters, and was, in the year 1883, a resident upon the Omaha Reservation. This residence was established as a member of his mother's family prior to the taking effect of the Act of Congress of August 7th, 1882, by the Indians giving their consent thereto. He selected land upon the Omaha Indian Reservation in accordance with the provisions of said act and is now living on said land. He has erected many valuable and lasting improvements upon the land thus selected. (Page 368, Record.)

CASE NO. 457.

WALTER V. PETERS is a son of Euphrasia Peters, and was in the year 1883 a resident upon the Omaha Reser-

vation. That such residence was established as a member of his mother's family prior to the taking effect of the Act of Congress of August 7th, 1882, by the Indians giving their consent thereto. He selected land upon the Omaha Indian Reservation in accordance with the provisions of said act, and is now living upon said land. He has made many valuable and lasting improvements thereon. (Page 368, Record.)

CASE NO. 458.

JACOB PETERS is a son of Euphrasia Peters, and was in the year 1883 a resident upon the Omaha Reservation. That such residence was established as a member of his mother's family prior to the taking effect of the Act of Congress of August 7th, 1882, by the Indians giving their consent thereto. He selected land upon the Omaha Indian Reservation in accordance with the provisions of said act and is now living upon said land. He has made many valuable and lasting improvements thereon. (Page 368, Record.)

CASE NO. 464.

MARY SAILORS is a daughter of Euphrasia Peters. She came to the reservation and selected her land in the year 1883, and in the year 1890 moved upon said land, and has occupied said land and resided thereon ever since. (Page 339, Record.)

CASE NO. 473.

MAGGIE ROCKWELL is a daughter of Euphrasia Peters. She came to the reservation and selected land first

in 1881 and again in 1883. In 1885 she broke up the land and planted thereon several bushels of walnuts. She did not establish a residence upon the reservation at that time because the officials at the agency objected to her going upon the reservation for the purpose of establishing a home. She has ever since claimed and still continues to claim the land so selected as her own under the provisions of the act of August 7th, 1882. (Page 339, and pages 878 and 879 of the Record.)

CASE NO. 461.

MITCHELL MONETTE, ET AL. This case was brought by the appellants as the heirs of Mary Monette. It is stipulated that Mary Monette was the daughter of La-ta-da-we, a full blood Omaha Indian woman. Mary Monette was recognized as a member of the Omaha Tribe of Indians by the payment of annuity money to her as a member of the Omaha Tribe of Indians in the year 1856, by her maiden name, Mary Bono. (Pages 38 and 489 of Record.) The brother of Mary Monette, being a child of the same mother, and all of his immediate family, are at this time recognized as members of the Omaha Tribe of Indians. Mary Monette, prior to her death, selected land for an allotment and paid for the breaking and the making of improvements thereon. (Page 492, Record.)

CASE NO. 460.

JENNIE M. ARNOLD is a daughter of Mary Monette. Jennie M. Arnold, with her two children, removed to the Omaha Reservation and took up a residence there

in the year 1890, during which time she selected land for allotment for herself and minor children. While living upon the reservation, her children were sent to the Omaha Indian Agency school, maintained for the exclusive use and education of Omaha Indian youth, and thereafter her children were sent to school at the Grant Institute, Genoa, Nebraska, a school also maintained by the Government for the exclusive education of Indian youth. (Page 489 of the Record.)

CASE NO. 462.

CASSIE M. KARCH is a daughter of Mary Monette. In the year 1890 she selected land for allotment, which land she has ever since occupied, improved and claimed for an allotment under the provisions of the act of August 7th, 1882. (Page 489 of the Record.)

CASE NO. 474.

MITCHELL MONETTE is a son af Mary Monette. He came to the Omaha Reservation with his mother in the year 1891, at which time he selected for allotment a tract of land upon which he has built a house. He has continuously occupied and cultivated said land since said time. (Page 489, Record.) The tuition for the education of his children was paid for by the Indian office. (Page 762 of Record.)

CLAIMS OF THE DEPARTMENT.

The right of these several claimants to an allotment of land was denied by the Department for the following reasons:—

First.—Because the ancestors of these claimants had received allotments upon the Nemaha Reservation under article ten of the treaty of 1830.

Second.—Because these claimants were not residing upon the Omaha Reservation at the time of the adoption of the treaty of 1865. (Page 167 of Record.)

The record discloses this denial by the Department of the rights of these appellants did not proceed from any settled construction of the operation and effect of the treaty of 1830, or of the subsequent treaty of 1865 for the reason a large number of Indians against whom every objection raised against these claimants could be made, received allotments.

Turning to the table at page 244 it appears Mary Jane Paul and her children received allotments under the treaty of 1830, and all of her lineal descendants, including her said children, have received allotments upon the Omaha Reservation under the act of 1882. (Pages 19 and 22 of Record.) No one of them was residing upon the Omaha Reservation in 1865 or 1866. Some of her descendants, allottees, are not now and never have resided upon the Omaha reservation. (Pages 77, 78, 79 of Record.)

The table shows the same situation exists as to the descendants of Antoine Barada—who have received allotments—and as to all of the descendants of John Pilcher. The court below held the fact the ancestor of a claimant

had taken an allotment upon the Nemaha Reservation did not conclude the claimant from an allotment under the act of 1882, and further, that a member of the Omaha tribe, whether full or mixed blood, could not be deprived of an allotment under the act of 1882 because he did not happen to reside upon the Omaha Reservation in 1865. The court further held if the claimant himself had taken land upon the Nemaha Reservation, or if the claimant did not personally reside upon the Omaha Reservation when the act of 1882 became a law, in either event he was not entitled to an allotment under that act, and applying these conclusions to the facts proved in the several cases pending, decided that Thomas L. Sloan and Garry P. Myers were entitled to the allotments sued for, and that the other appellants were debarred therefrom. (Page 259 of Record.)

SPECIFICATION OF ERRORS RELIED ON.

A separate assignment of error will be found in the printed record in each case. The errors assigned in No. 453 cover all the questions presented in all the cases.

And for that reason we print here the errors assigned in that case.

First.—The court erred in finding and determining that Margaret Sloan received an allotment of land in the Nemaha Reservation and was for that reason debarred from claiming a further allotment upon the Omaha Reservation.

Second.—The court erred in construing the treaty between the United States and the Omaha Tribe of Indians, made July 15th, 1830, as meaning and intending that the taking of an allotment of land by a member of such a tribe pursuant to article 10 of said treaty thereby extinguished the claim of such Indian to further allotment of land or further allotments or benefits in the tribal property as a member of such tribe.

Third.—The court erred in construing the treaty between the United States and the Omaha Tribe of Indians, of July 15th, 1830, as meaning and intending that half-breed members of the reservation tribe who secured allotments of land in severalty in the Nemaha Reservation under the terms of said treaty are not entitled to a second allotment under the act of 1882, although at the time of is passage they were residing on the reservation in the tribal relation.

Fourth.—The court erred in construing the treaty made between the Government of the United States and

the Omaha Tribe of Indians on March 6, 1865, as excluding from allotments of land thereafter to be made and from participation in the division of the property belonging to said Omaha Tribe of Indians, all Omaha Indians not then residing upon the reservation and with said tribe.

Fifth.—The court, after construing the treaty of March 6th, 1865, as not excluding from allotments of land those persons who were not on the reservation at such time, erroneously holds that such persons are deprived of their tribal rights, if they were not *bona fide* residents on the Omaha Reservation on August 7th, 1882, the date of the passage of said act.

Sixth.—The court erred in holding that the complainants were not members of the Omaha Tribe of Indians under the various treaties between the United States of America and the said Omaha tribe.

Seventh.—The court erred in construing and declaring that the Act of Congress of August 7th, 1882, referred only to Omaha Indians then residing upon the reservation of said tribe with the members thereof.

Eighth.—The court erred in holding that a person of mixed blood who did not reside upon the Omaha Reservation at the date of the passage of the act of August 7th, 1882, but who did reside thereon afterward and prior to the time when the tribe gave the consent required to render the act effective, is deprived of his allotment of land thereon and his benefits in his tribal property.

Ninth.—The court erred in assuming that the residence of a member of the Omaha tribe of Indians off of the reservation terminated his right to an allotment of

land or right to participate in the common tribal property.

Tenth.—The court erred in adjudging and determining that Margaret Sloan, at the date of her death, was not vested with the title to the land she was occupying in such sense that her death devolved or vested any title thereto in her heirs.

Eleventh.—The court erred in holding and determining that Margaret Sloan at the time of her death was not entitled to claim and have allotted to her the land described in plaintiff's bill of complaint, to-wit: the southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter of section thirty-five (35), township twenty-five (25) north of range seven (7) east, and the north half of the northeast quarter of section twenty (20), township twenty-four (24), north of range eight (8) east, and that such described property did not vest in complainants, the heirs-at-law of said Margaret Sloan, at the time of her death.

Twelfth—The court erred in that the court, by its judgment and decree in said cause, found upon the merits of the case for the defendants and against the complainants.

Thirteenth.—The court erred in that the injunction granted in said cause was dissolved and the suit dismissed at costs of the complainants.

Wherefore, complainants pray that said decree be reversed and that complainants be restored to all things lost by reason thereof.

31178

Following the opinion of the trial court the cases divide themselves into three classes.

First.—The cases in which the court below found the claimants were members of the Omaha Tribe of Indians but were not entitled to an allotment of land solely for the reason they were not residing upon the reservation on August 7th, 1882., This class includes all the cases except No. 453.

Second.—The cases in which the claimants had received allotments of land upon the half-breed reservation agreeably to the provisions of the treaty of July 15th, 1830, and were therefore deemed not entitled to allotments under the act of 1882.

Such claimants are found in cases Nos. 453, 461, 475, 465 and 469. In the last two cases, 465 and 469, the circumstances apply to the said complainants, but not to their minor children, for whom they are also suing. These children fall within the first class.

Third.—The cases in which the claimants made their selections upon the Omaha Reservation and applied for allotments in the manner provided by law, but died before an adjudication of their rights occurred, in which event the court below held the heirs-at-law of the deceased claimant did not succeed to and could not enforce such right. The cases are Nos. 453 and 461.

Assignments of Error numbered 4, 5, 6, 7, 8 and 9 relate to the conclusion reached by the trial court in the first class above enumerated and may conveniently be discussed together. The tenth assignment of error applies to the third class, and all other assignments not above enumerated to the second class.

ARGUMENT.

FIRST CLASS.

All the appellants are descendants of two full blood Omaha Indian women, La-ta-da-we, who married Francis Bono, and Taegleha Hacienda, who married Michael Barada.

Certain of the descendants of each were denied allotments under the act of August 7th, 1882, and certain others of such descendants were fully recognized, allotted lands and paid annuities. All derived their rights from the same source and all were subject to the same usages and customs of the tribe and entitled to the same treatment. Under a uniform rule fairly applied all would enjoy the same consideration by the officers of the government charged with the duty of carrying the laws and treaties into effect.

This consideration we insist upon. The appellants should not be made exceptions to a long continued policy established and carried into effect by the tribe and the Department. Out of 144 of the descendants of Taegleha Hacienda 99 are enjoying their allotments and annuity payments, 50 are denied.

The children of La-ta-da-we were Mary Monette and Orrin Mitchell. Mary Monette and family have been denied, Orrin Mitchell and family recognized.

The recognition of these appellants or their immediate ancestors in the payment of annuity moneys and by enrollment duly certified to by the chiefs and head men of the tribe, and also by the officials of the government charged with the duty of determining who were entitled

thereto under the laws and treaties constitute an adjudication of the rights of the parties who were so paid. The judgments stand unless they can be set aside for want of jurisdiction in the parties making such decision, or for fraud. These adjudications or judgments in favor of these appellants or their ancestors have stood and now stand unchallenged.

The allotments to some of these appellants upon the half-breed reservation under the treaty of 1830 (See page 61 of Record), was a judgment in favor of such persons and established the fact they were members of the Omaha Tribe of Indians. This court, in passing upon that schedule, said:

> "And it may be admitted that the decision of the special agent in identifying the Indian half-breed entitled to participate, and in alloting the portion of each, would, in the absence of fraud, be conclusive."
>
> *Hegler vs. Faulkner,* 14 Sup. Ct. Rep. 779. Citing *Wilcox vs. Jackson,* 13 Pet. 489.

The treaty of July 15th, 1830, will be more particularly considered in the argument in the second class of appellants.

The treaty of 1854 between the Omaha Indians and the United States is the foundation and beginning of every right and benefit the tribe or the individuals of the tribe have since enjoyed. Prior to 1854 the Omaha Indians occupied their lands as Indian Country. It was the right to hunt over and occupy with the fee resting in the government. The main Omaha village was at Bellevue, about seven miles south of the City of Omaha. The removal of

the Indians was desired by the citizens of Omaha, and the treaty of 1854 was the result. By this treaty the Omaha Indians ceded to the United States all their country, and out of it received a reservation. The payments of money down to 1890 with but few exceptions were provided for in this same treaty. The treaty of March 6th, 1865, provided for a sale of a part of the reservation created by the treaty of March 16th, 1854, and the treaty of 1865 gave rights of allotment similar to those set forth in the previous treaty. The Act of Congress of August 7th, 1882, provided for the sale of a part of the Omaha Reservation created by the treaty of March 16th, 1854, and for an allotment of the balance of the land.

The provision in the act for the sale and for the allotments was only the carrying out of the intention of the parties to the original treaty. The members of the tribe who were entitled to allotments under the treaty of 1854 were entitled to allotments under the subsequent treaty of 1865 and Act of Congress of August 7th, 1882. In construing the treaties and the Act of Congress together it clearly appears there was no intention on behalf of the government or of the Indians to cut off any one who was once a member of the tribe, or to deprive him of any of his individual rights. The right of Margaret Sloan to an allotment upon the Omaha Reservation existed from the year 1854 to the time of her death in December, 1898. This same right to an allotment existed on behalf of all her children who were enrolled with her. It existed on behalf of Antoine Barada and his children, who were enrolled with him, and also existed as to Mary Bono and her children.

The ancestors of these appellants being members of the tribe, it follows the usages and customs of the tribe in the recognition and enrollment of children born to members of the tribe must apply to them. Children of recognized members of the tribe and the descendants of such persons are recognized as members of the Omaha tribe by blood and by usages and customs of the tribe.

The rolls of the first payment ever made show that half-breeds were recognized as members of the tribe. (Pages 35 and 36, Record.) Upon the last roll of a payment made to the Omaha Tribe of Indians 79 children of white men were recognized as members of the tribe and paid annuity moneys. This roll was paid in December, 1901, and contains 79 names of such persons ranging in ages from 2 months to 68 years. (Pages 53, 54, 56 and 232, Record.) The lists together show 134 persons who have only one-half Omaha Indian blood or less who are enrolled as members of the tribe. Thirty-three of the total are the children of full-blood white mothers, the fathers being of part Omaha Indian blood, and the balance are the children of white men and mixed blood women who were allotted lands but who have relinquished their tribal rights among the Omahas and have been adopted into the Osage Tribe of Indians.

These lists, taken with the evidence, show it is the custom and usage of the Omaha Tribe of Indians to enroll the children born to members of the tribe without reference to the degree of blood, or which parent was a member of the tribe.

There must be a positive enactment of a statute in

order to change the custom and usage of an Indian tribe or band.

Wall vs. Williams, 8 Ala. 48.
Boayer vs. Dively, 58 Mo. 510.

W. A. Jones, Commissioner of Indian Affairs, reporting to the Secretary of the Interior, makes the following statement:

"Reference is also made to the doctrine laid down by the Supreme Court of the United States to the effect that usage is evidence of the construction given to a law, and must be considered binding on past transactions. (*U. S. vs. Macdaniel,* 7 Pet. 1.) And that the acts of the legislature ought never to be so construed as to subvert the rights of property, unless its intention to do so shall be expressed in such terms as to admit of no doubt and to show a clear design to effect the object.

Rutherford vs. Green, 2 Wheat. 201.
U. S. vs. Arrenddo, 6 Pet. 732.

"It appears to this office that such applicants or allottees have such a vested right in the lands applied for or allotted as to be able to maintain an action for the same under a clause contained in the Indian appropriation Act approved August 15th, 1894."

Report of the Commissioner of Indian Affairs, 1899, pages 48 and 49.

"A claim of membership in an Indian tribe may be established by the laws and usages thereof, although such recognition may not be in harmony with the general rule that among free people the child of married parents follows the condition of the father."

3118

Black Tomahawk vs. Waldron, 19 Dec. Dept. Int. P. L. 311.

Same vs. William Banks, 26 Dec. Int. P. L. 71.

"The right to receive an allotment under the act of February 8th, 1887, as defined in the Departmental regulations authorized by section 3 thereof, requires the applicant to be a recognized member of an Indian tribe, or that the father or mother of the applicant should have been so recognized."

Julia Cox, 22 Dec. Dept. Int. Pub. Lands 167.

"The question of whether or not the Sioux half-breed or quarter blood is an Indian within the meaning of the act of March 2d, 1889, chapter 405, is to be determined not by the common law, but by the laws or usages of the tribe."

"Such laws and usages are not matters of which judicial notice can be taken, but present questions of fact upon which the attorney general can not advise."

"Affirmatively, a person apparently of mixed blood residing upon a reservation and claiming to be an Indian is, in fact, an Indian."

Sioux Mixed Blood, 20 Op. Atty. Gen'l. 711.

The greatest question of this kind that has come up has been among the five civilized tribes of the Indian Territory, and Congress, dealing with the question, directed the following rule of decision for the Commission:

"That in determining all such applications said commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to

the rolls, usages and customs of said nations or tribes."

29 U. S. Stats. at Large, 323.

The rule by which allotments were made to Omaha Indian women as heads of the family where their husbands were not entitled to allotments has been expressly set forth in the report of the Commissioner of Indian Affairs for 1899, page 46, as follows:

> "Under the fourth section of the general allotment act approved February 8th, 1887 (24 Stats. 388), Indians residing upon the public domain are authorized to make application for allotments of land. Under that section the secretary of the Interior issued the following circular, dated September 17, 1887, prescribing rules and regulations regarding allotments to Indians of the United States lands not otherwise appropriated. This circular contained the following instructions:"
>
> "Indian women married to white men, or to other persons not entitled to the benefits of this act, will be regarded as heads of families. The husbands of such Indian women are not entitled to allotments, but their children are."

Congress has fixed the status of the children of a white man and Indian woman by the following enactment:

> "That all children born of a marriage heretofore solemnized between a white man and an Indian woman by blood and not by adoption, where said Indian woman is at this time or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to property of the tribe to which the mother belongs or belonged at the time of her

3118

death, by blood, as any other member of the tribe, and no prior act of congress shall be so construed as to debar such child of such rights."

30 U. S. Statutes at Large, 62-90.

This act gives statutory effect to the usages and customs of the Indian tribes under which all the appellants have the rights of Omaha Indians.

The recognition of an Indian woman as a member of a tribe, she being of the blood of that tribe, gives to her children all the rights possessed by members of the tribe.

And further, no act of Congress should be so construed as to debar such children of such rights.

The Act of Congress of August 7th, 1882, provided for allotments to Omaha Indians. No distinction is made as to blood or residence and this court is called upon to construe the law as it is.

In the history of Indian affairs two distinct policies have been in force. During the time the Cherokees, Choctaws, Chickasaws, Creeks and Seminoles were treating for western lands they and the white settlers among them were not in harmony. The treaties then promulgated show an intention on the part of the Indian to acquire a territory where they could, without conflict, develop and maintain their nationality. The Government was anxious to remove them from the country where they were in conflict with advancing civilization.

The Indians, for the purpose of creating and maintaining their nationality, required that all who should have the benefit of their treaties must remove to and reside upon the lands set apart for them. This they further enforced by legislative acts of their National Council.

Upon these treaties and policies the requirement was made that members of the tribe should live in the tribal relation, and a failure to do so was a forfeiture of their rights. The treaties which they made provided for the giving of property to the persons remaining in the ceded country, and that they should become citizens of the states where they were then located.

No such provision appears in any of the Omaha treaties, and the policy on the part of these Omaha Indians and the Government in dealing with them has been to abolish the tribal relation and to advance the individual toward citizenship.

There being no statutory requirement of residence to entitle an Omaha Indian to an allotment under the act of 1882, the court erred in holding that residence upon the reservation at the date of the approval of the act was necessary in order to secure such allotment.

In re application of Jasper C. Halloway for payment of annuities, Willis Vandevanter, Assistant Attorney General, says:

> "I quote from the opinion in the Banks case the following remarks, as applicable to the case now under consideration:
>
> "'It has been the declared policy to encourage the breaking up of tribal relations among the Indians and different laws have been enacted with that end in view. The act of March 3, 1875, (18 Stat., 402-420), conferred the benefits of the homestead law upon Indians who had abandoned their tribal relations, but with a proviso as follows:
>
> "'"Provided, That any such Indian shall be entitled to his distributive share of all annuities, tribal

funds, lands and other property the same as though he had maintained his tribal relations."

"'The allotment act of February 8th, 1887, (24 Stat., 388), declares every Indian who has taken up his residence separate and apart from his tribe and has adopted the habits of civilized life, a citizen of the United States "without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property." In view of these provisions of law it must be held that Banks did not, by severing his tribal relations, give up his distributive share in the tribal property, and that consequently he is entitled to an allotment in the lands of said tribe.'"

In *People vs. Cayuga Indians*, 41 N. Y. Sup. Ct. Rpts. 588, this question is also considered:

"That since, on account of their participation in the war of 1812 and 1814, as subjects of the British crown, no portion of the annuity has been paid them, but the whole sum has been distributed among the branches of the nation within the United States. The court said:

"'They stand on the treaty granting this annuity. For that annuity their ancestors sold their land. The state has had the consideration, and must pay the purchase money. And the state must pay to the lawful claimants; not arbitrarily to those whom they prefer. If the state establishes a tribunal to determine who are entitled, these petitioners must be heard and their rights legally passed upon.'

"Suppose the treaties of 1798 and 1795 had never been made, all of these, who are now the posterity of the Cayugas of the date of those treaties, would have had their rights in this great property. All of them would practically have been owners of it.

> They should all have some rights now in the annuity, which was promised in payment for the land. It matters not where they live, whether under this government or under that of England, their rights are the same. Nor does it matter that they are broken up into portions and can no longer be called one nation, or that their several rights are thus in conflict. So far as is possible, the rights of all should be protected, so that, in the way best suited to their habits, every famliy or individual should enjoy the benefit of the annuity. We are of the opinion that the relief asked by the relators should be granted."

The Omaha Indians and the Government did not require residence upon the reservation. (Pages 77, 78, 133 and 517 of Record.)

Neither could mixed bloods terminate their tribal relations. (Page 240 of Record.)

A reasonable conclusion is that those of the appellants who have been recognized as members of the tribe continue as such members. They could not terminate that relation without the consent of the United States, expressed in some law or treaty. This not having been given, the usages and customs of the tribe apply in fixing and determining the rights of their children.

"INDIAN—*When Under Charge of an Agent.*

> When a tribe of Indians is placed under the charge of an Indian agent by treaty or otherwise, each member of such tribe is under the charge of such agent, within the purview of section 3129 of the Revised Statutes, and no member thereof can dissolve his tribal relation or escape from such charge by ab-

senting himself from such reservation, or otherwise, without the consent of the United States.

Same.

An Indian boy in Oregon, who left the locality of his tribe and lived with a white family until his tribe had entered into treaty relations with the United States and gone upon a reservation in pursuance of such treaty, and until he was 23 years of age, and then went to live upon such reservation as a member of his tribe, could not thereafter, by simply absenting himself from the reservation, dissolve his tribal relation or cease to be under the charge of the agent of such reservation.

Intercourse with Indians.

It is the duty of Congress to regulate the intercourse with the Indians, and to that end they may provide for punishing the giving of spirituous liquors to them on or off a reservation within or without a state."

"It does not appear that the tribal relation of Thomas has been dissolved by any act of the government, or that it has in any way consented to or acquiesced in any such purpose on his part. And, without such consent, we do not think the relation can be dissolved, as against the United States, after being recognized by it. But in the absence of any law or regulation made or authorized by Congress to that effect, mere absence from the reservation, however prolonged, is not proof of such consent, because it may occur without the approval of the government, and it may take place with the consent of the agent for some lawful purpose, and with intent to return.

U. S. vs. Earl, Fed. Rep., Vol. 17, pages 75 and 78.

"The alien and dependent condition of the members of the Indian tribes could not be put off at their own will, without the action or assent of the United States. They were never deemed citizens of the United States, except under explicit provisions of treaty or statute to that effect, either declaring a certain tribe or such members of it as chose to remain behind on the removal of the tribe westward, to be citizens, or authorizing individuals of particular tribes to become citizens of the United States on application to a court of the United States, for naturalization, and satisfactory proof of fitness for civilized life.

"But the question whether any Indian Tribes or any members thereof have become so far advanced in civilization that they should be let out of the state of pupilage and admitted to the privileges and responsibilities of citizenship, is a queston to be decided by the nation whose wards they are and whose citizens they seek to become; and not by each Indian for himself."

Elk vs. Wilkins, 112 U. S., pages 645 and 648.

That all of the claimants in these cases were both by birth and recognition at one time members of the Omaha Tribe of Indians cannot be doubted. That at the time of the passage of the act of 1882 the Omaha Tribe of Indians had a potential political existence, recognized by the government, is likewise true. The act in question includes every member of the tribe, none are excluded from the benefits conferred.

The question, and the only question, to be determined is, were these claimants members of the tribe when the act was adopted or became operative. With membership once

conceded, it was not within the power of the individual Indian, or of the tribe, to accomplish expatriation. Furthermore, it was not within the power of the administrative department of the government to accomplish expatriation except pursuant to some statute or treaty.

The policy of the government has been to induce the individual member of the tribe to abandon his tribal relation and adopt the habits, manners and customs of civilized life and to qualify him for American citizenship.

Millions of dollars have been appropriated for this purpose. Every energy of both the legislative and administrative departments have been devoted to this end. This court is asked to say the act of Congress of 1882 was intended to punish the Omaha Indian who separated himself from his tribe and who did adopt the habits, manners and customs of the civilized people, and who did carry out the wishes of the Government in this behalf, by depriving him of his interest in the property held in common by his tribe.

The rule here contended for is—that the persons who are now members of the Omaha Tribe of Indians are those who were members of the tribe in 1854 and their descendants; that the right to an allotment under the treaty of March 6th, 1865, and the Act of Congress of August 7th, 1882, is but a continuation of the right to an allotment under the treaty of March 16th, 1854.

Under this rule all of the appellants are members of the tribe and entitled to their respective allotments.

SECOND CLASS.

In construing the tenth article of the treaty of July 15th, 1830, as meaning and intending that the taking of an allotment of land under said article was to extinguish the right of said claimant to any further or other allotment of land and to prevent the taking of an allotment under the Act of August 7th, 1882, is the reading an intention into the treaty not therein expressed or clearly implied by any of the language used, and is not supported by any proof of the intention of the parties to the treaty. In the absence of such intention expressed or implied by the parties to the treaty, such construction is adding to the treaty instead of construing it. No such construction was given to the treaty either by the Indians or by the Government for the annuity payments participated in by the appellants or their immediate ancestors (pages 44, 45, 47, 48, 49, 50 and 51, Record), were, after all, the obligations under the treaty of 1830 had passed under said tenth article of the treaty. (Page 25, Record.) As further showing no such intention was in the minds of either the Indians of the Omaha tribe, or of the Government officials charged with the duty of carrying into effect the laws and treaties relating to this tribe, it appears in the schedule of allotments made under the fourth article of the treaty of March 6th, 1865, assignments were then made to persons who had received allotments upon the Nemaha half-breed reservation under the provisions of the tenth article of the treaty of July 15th, 1830.

The statement made by the Department that it was the universal rule to exclude from allotment under the

3118

Act of August 7th, 1882, all persons who had previously obtained allotments under the treaty of 1830, is not substantiated by the table of allotments shown upon page 82 of the Record. This table discloses the names of seventeen persons who received allotments under the treaty of 1830 and under the act of 1882, as members of the Omaha Tribe of Indians. Members of other tribes who received allotments under the treaty of 1830 have subsequently received allotments of land under various other acts applying to the particular tribes to which such persons belonged.

All of the Omaha Indians who received allotments under the act of 1830 have since received allotments upon the Omaha Reservation except the claimants in these several suits.

That there was no intention of cutting off the persons who received benefits under the treaty of 1830 from the enjoyment of their other tribal rights, is shown from the following facts: In making the survey of the half-breed reservation a portion thereof was wrongfully excluded and sold as a part of the public domain. In making a correction of the original survey, it was found there was a deficiency and that a large number of persons, half-breeds and mixed bloods, who were entitled to the benefits under the provisions of the tenth article of the treaty were deprived of their rights.

The United States, in making up to them the loss they had thus sustained, appropriated a sum equal in amount to $1.25 per acre for every acre so wrongfully excluded. This sum was divided per capita among the Indians who failed to receive their lands. The list showing such persons is found upon pages 27 and 28 of the Record.

The Act of Congress, providing for the payment of this money, specifically sets forth that their receipt shall be a relinquishment of their right and claim to the deficiency in the half-breed reservation. It clearly appears that by accepting this benefit they were not relinquishing or releasing any of the rights or benefits which they had in common as members of the Omaha Tribe of Indians. The twelfth article of the treaty of July 15th, 1830, specifically sets forth "that nothing contained in the foregoing articles shall be construed so as to affect any claim, or right in common, which has heretofore been held by any tribes, parties to this treaty, to any lands not embraced in the cession herein made; but that the same shall be occupied and held by them as heretofore."

Richard Olney, attorney general of the United States, in Opinions of Attorney Generals, Vol. 20, page 747, says:

> "Mrs. Van Meter subjected herself to no estoppel as against the Sioux Indians by taking the scrip. It represented individual property; perhaps, even, a wholly unlooked for bounty from the U. S. Government. Nor was Mrs. Waldron subject to any estoppel in 1889 as against the United States, which dealt with the Sioux Nation as a body. It is well settled that an Indian may hold individual property under treaty allotment and at the same time rejoin her tribe without objection, so far as the United States is concerned. (*Pennock vs. Commissioners,* 103 U. S. 48.)
>
> "For these reasons I do not think that the treaty of 1830, or any of the proceeedings thereunder, overthrow the presumption arising from Mrs. Waldron's race, residence and claim to Indian citizenship, and the recognition of said claim by the United States

officials before and at the time of the agreement of 1889."

All of the acts of the Indians and of the United States Government during the period from July 15th, 1830, down to May, 1883, the date when the allotments were made under the act of 1882, have been in conformity with the treaty except as to these appellants, and have been in direct opposition to the construction given to said treaty by the court below in these cases.

The construction adopted by the trial court is not sustained by any evidence of the intention of the parties to the treaty. The duty of the court is to construe, not to make, as this court has well said:

> "In the first place this court does not possess any treaty making power. That power belongs by the constitution to another department of the government; and to alter, amend, or to add to any treaty by inserting any clause, whether small or great, important or trivial, would be on our part an usurpation of power, and not an exercise of judicial functions. It would be to make and not construe a treaty. Neither can this court supply a *casus omissus* in a treaty, any more than in a law. We are to find out the intention of the parties by just rules of interpretation applied to the subject matter; and found that, our duty is to follow it as far as it goes, and to stop where it stops—whatever may be the imperfection or difficulties which it leaves behind. The parties who formed this treaty, and they alone, have the right to annex the form of the passport. It is a high act of sovereignty, as high as the formation of any other stipulation of the treaty."
>
> *The Amiable Isabella*, 6 Wheat. 71.

THIRD CLASS.

In this class we have the cases of John M. Sloan, et al., No. 453, and Mitchell Monette, et al., No. 461.

Margaret Sloan, as a half-blood member of the Omaha Tribe of Indians, received an allotment under the provisions of the treaty of 1830. (Page 61 of the Record.) Being recognized as an Indian woman she had the right to select land under the provisions of the treaty of March 16th, 1854, and also under the provisions of the fourth article of the treaty of March 6th, 1865. She made her selection of 160 acres upon the Omaha Indian Reservation, and lived upon and improved this land before the Act of Congress of 1882 was passed.

Her sister, Mary Jane Paul, who received an allotment under the treaty of 1830, received an allotment in pursuance to the act of August 7th, 1882. Under the rules as to the making of allotments to Omaha Indians, Indian women married to white men were allotted as the heads of the families. Margaret Sloan was, therefore, the head of a family and entitled to select and hold 160 acres of land as her allotment. The fact her grandson was living with her at the time this selection was made was sufficient to make her the head of the family. (Page 64 of the Record, *Ladiga vs. Roland,* 2nd Howard, 581.)

She made her selection as the head of a family and reported it to the agent. All other acts were those devolving upon the agents and officials of the Indian office and the Department of the Interior. What was then left to be done, ought to have been done by the Government and its agents. The failure and refusal of such officials to do

their duty should not deprive her of her legal right, which she persistently maintained from the year 1881 to the time of her death, in December, 1898.

The principal object of the act of 1882 was to break up the tribal relation and create estates of inheritance. This could not be accomplished if the death of the claiming allottee before the approval of the Secretary extinguished the selection. On some reservations such a rule would create consternation. Among the Winnebagoes the selections made in the year 1887 were not approved by the Secretary of the Interior until December, 1893. Of about one thousand who selected land in 1887 a number died before December, 1893, but such allotments were approved and patents issued.

The Department has not placed such a construction upon the allotment laws. The Sioux Act, under which allotments have been made (March 2, 1889; 25 Stats. at Large, 888), and in which the title granted is identical with that of the Omaha allotment act, and the general allotment act known as the Dawes Bill of February 8, 1887, (24 Stats. at Large, 388), were not so construed.

Section 5 of the act of August 7th, 1882, under which the Omahas were allotted, shows who are entitled to allotments and the quantity of land to each. Section 1 of the act of February 8, 1887, under which the Indians generally have been allotted, shows the persons entitled to land and the quantity to such persons. Section 8 of the act of March 2d, 1889, under which the Sioux have been allotted makes the same provision. Section 6, of the Omaha Act, Section 5 of the General Allotment act and Section 11 of the Sioux act provide for the kind of patents to be issued

to the allottees. They are identical except in so far as they differ in their application. The Omaha act provides for the descent according to the laws of Nebraska, the general act and the Sioux for the descent of the land according to the law of the state or territory where the land is situate. The following decisions shows the construction adopted by the Department of the Interior:

> "In the cases presented it appears that the Indians made their application as required by law, which were received by the local officers who certified that there were no prior valid rights thereto. The Indians had done all that was required of them, and the fact of their decease after the acceptance of their selections cannot, in my judgment, militate against the right of the heirs to the land selected by them. Besides, section 11 expressly provides for the issuance of a patent upon the allotment where the allottee has died after the allotment and prior to the issuance of a patent thereon. The trust is for 'the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, of his heirs,' and after the expiration of the trust a patent to be issued 'to said Indian or his heirs as aforesaid in fee.'
>
> "Heads of families and single persons over 18 are required to select for themselves, and to do this must be alive. In the case presented the selections have been made, and it only remains for the Department to carry out the wishes of those authorized to make the same to secure to the heirs of the applicants the use of the lands so selected.
>
> "I am, therefore, of the opinion, and so advise you, that where selections of land have been received in the local land office under the provision of said

section 13 of the act of 1889, and there is no prior valid claims thereto, the same should be duly allotted, and in case of the death of the allottees prior to such approval, patents should issue as required in section eight."

Sioux Indian Lands—Allotments, 14 Land. Dec. 463.

Section 13 gives the same right to Indians in the ceded country and public domain as section 8 bestows within the limits of the reservations.

Under the general allotment act the following decision has been had by the Department of the Interior.

"Where an allottee dies after selection and prior to approval, the allotment will, upon approval, be confirmed to the heirs of the deceased allottee.

"Patent should issue in the name of the heirs generally, where the allottee dies prior to the issuance of the patent."

Florence May Ree, 17 Land. Dec. Int. Dept. 143.

Under the equity maxim that "Equity regards that done which in good conscience ought to be done," the selections of these appellants should be approved.

Taylor v. Benham, 5 Howard, No. 269.
Peter v. Beverly, 10 Pet. 571.

The appellants in these several cases selected their land with the firm belief they were entitled under the laws to the same rights as were bestowed upon the other members of their family. They have occupied and cultivated the lands thus selected for many years, and have placed valuable improvements thereon. They have built homes,

educated their children, and have followed the habits and customs of civilized life. In so doing they have carried out the wishes of the Government in this behalf. To deprive them of their allotments would be fixing a penalty for doing the very things the Government has asked them to do.

The appellants are not aliens, for they were born in this country. There has never been a desire or intention upon their part to relinquish their membership in the tribe and become citizens of the United States. There is no law or treaty by which they could expatriate themselves from the tribe, even if they so desired. They remain members of the Omaha Tribe of Indians, and as such members have a vested interest in all of the tribal property. We firmly believe they are entitled, as their pro rata share of the tribal lands, the selections made by them upon the Omaha Reservation.

Respectfully submitted,

THOS. L. SLOAN,

H. C. BROME,

Attorneys for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

Nos. 453 to 475.

JOHN M. SLOAN ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA ET AL., APPELLEES, AND TWENTY-TWO OTHER CASES, BEING NOS. 453 TO 475, INCLUSIVE.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

REPLY BRIEF FOR APPELLANTS.

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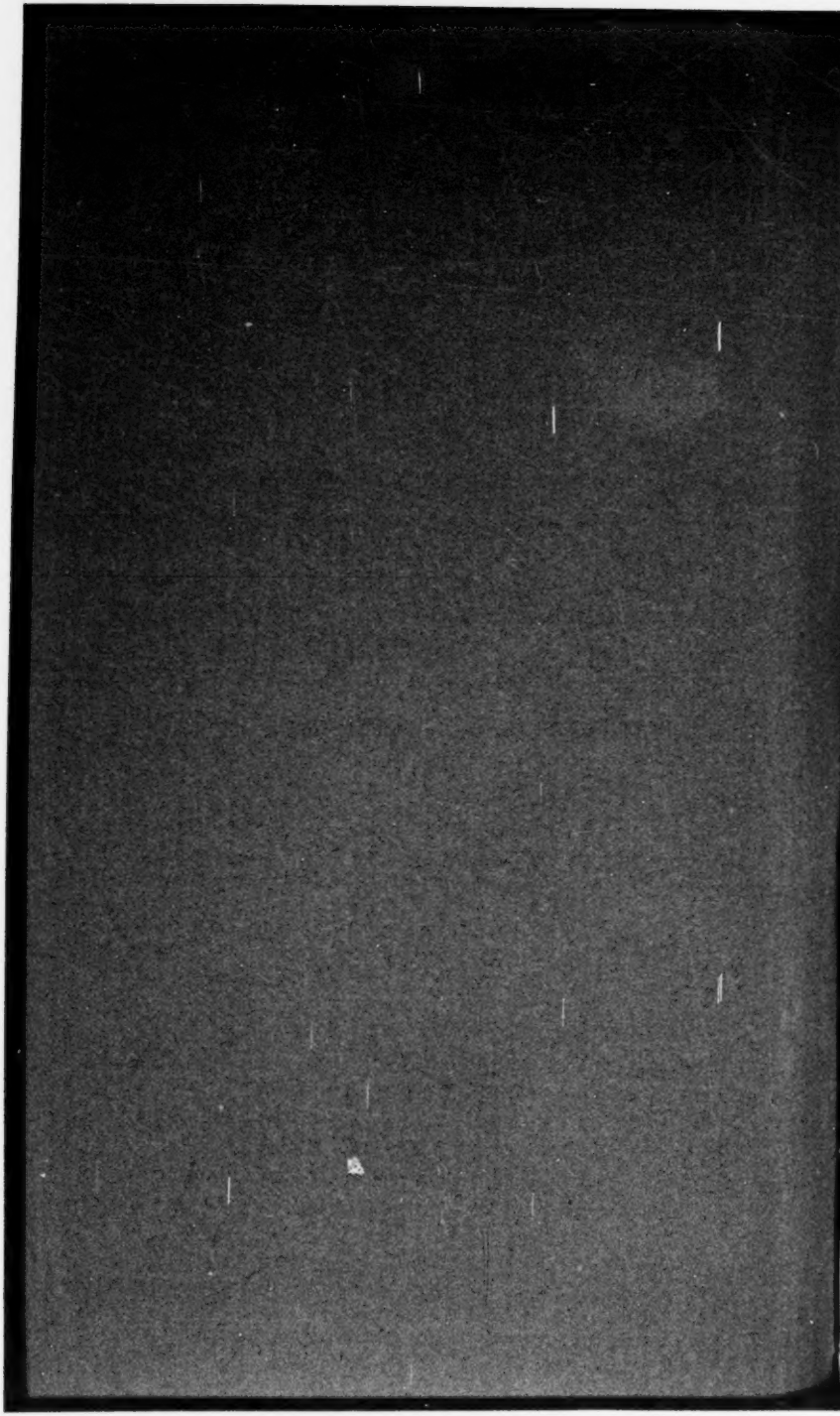

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

JOHN M. SLOAN ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA ET AL. AND TWENTY-TWO OTHER CASES, BEING NOS. 453 TO 475, INCLUSIVE.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

REPLY BRIEF OF APPELLANTS.

The appeals in these cases were brought under the following subdivision of section 5 of the act of Congress of March 3, 1891:

"In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question."

These appellants claim by their pleadings that they are members of the Omaha tribe of Indians and beneficiaries under the treaty of March 16, 1854, and all the subsequent treaties and acts of Congress relating to the said Omaha tribe.

That the usages and customs of the tribe in general applied also to these appellants. That all the tribal benefits

to which the members of the tribe are entitled under the treaties and acts of Congress have not been relinquished by these appellants, and that they exist on behalf of the tribe by virtue of the treaty of March 16, 1854.

The appellees claim that by the construction of the treaties of July 15, 1830, and the treaty of March 6, 1865, as interpreted by them, the membership of these appellants was terminated (Record, p. 15).

All the rights which the Omaha Indians now enjoy or have enjoyed since 1854 have their origin and foundation in that treaty. These appellants or their immediate successors were members of the tribe enjoying the benefits of said treaty. The annuity rolls on pages 35 to 52 of the record show payments to Antoine Barada and family, to Margaret Sloan and family, and Mary Bono, later known as Mary Monette. The appellants, Celestine B. Kuhn, Thomas Barada, John M. Sloan, Artemesia Frost, and Euphrasia Peters, were members of the families then paid, the last-named being the mother of the appellants named Peters, Mitchell, Sailors, and Rockwell (pp. 94, 95, 367, 339, 340, Record). It is stipulated that Antoine Barada and Mushunumpashi are one and the same person (p. 66, Record), in which name Antoine Barada was paid annuities for himself and family.

The intention of the Indians concerning their mixed-blood relatives is shown by the testimony of Robert W. Furnas, one of the commissioners on the part of the United States in making the treaty of March 6, 1865 (p. 215, Record).

A number of mixed-blood Omaha Indians not living upon the reservation at the date of August 7, 1882, or at any other time received allotments (pp. 77, 78, 120, 133, 517, 518, Record).

"The construction of treaties is the peculiar province of the judiciary; and except in cases purely political, Congress has no constitutional power to settle the rights under a

treaty or to effect titles granted by the treaty itself" (Jones *v.* Meehan, 175 U. S., 2).

"As the construction of a treaty made under the authority of the United States and constitutionality of an act of Congress were drawn in question in the circuit court, this court could have taken cognizance of the case upon appeal, and determined those questions, and having thus acquired jurisdiction of the cause, it could have determined any question of jurisdiction of the circuit court" (Robinson *v.* Caldwell, 165 U. S., 392).

"A suit to establish a land claim by virtue of the treaty of 1821 with Spain is properly brought by direct appeal from the circuit court to the Supreme Court of the United States" (Mitchell *v.* Furman, 180 U. S., 402).

"A motion to dismiss for want of a Federal question cannot be sustained when the title involved depends upon a Spanish grant claimed to have been perfected under the treaty of 1819 with Spain and a patent of the United States in alleged confirmation of such claim (Mobile Transportation Co. *v.* Mobile, 187 U. S., 479).

"It is quite clear, that, in fact, neither the construction nor the validity of any treaty of the United States or made under its authority is in any way involved, or arises, or is drawn in question in this case. Mere allegations to that effect not based upon the facts in the case, do not create a case which we are authorized to review. * * * Moreover, the defendants did not connect themselves in any way with the Indian treaties, or with any of the parties to them; nor did they claim any rights under said treaties; or under any of the parties to them. In no true sense, therefore, can it be said that this is a case in which the validity or construction of any treaty made under the authority of the United States is drawn into question by a party having a rightful interest in such question" (John Budzisz *v.* Illinois Steel Co., 170 U. S., 44).

These appellants are directly connected with the treaties set forth in the pleadings and which have been construed by the Department of the Interior as applying to them and also construed by the court below in reaching his conclusion of these cases.

"True, the course of events has not been what was then contemplated, *but in order to determine the meaning of this contract we must place ourselves in the circumstances of the parties at the time, with their surroundings and expectations.* In that light we see nothing in the matters suggested by counsel sufficient to overthrow the plain import of the language used in the agreement, and must conclude by such agreement the Delawares became incorporated into the Cherokee Nation, became members thereof, and as such, entitled equally with the native Cherokees to all their rights in the reservation and outlet.

"Further, it may be remarked that the action of the Cherokee Nation up to the year 1882 was in the line of the construction we have placed upon this contract, for up to that date there was no distinction made between the native Cherokees and these Delawares in the distribution of funds from whatever source obtained. Out of the moneys received by the Cherokee Nation on account of lands west of the 96th degree set apart for the Osage Indians, under the act of June 5th, 1872, $200,000 was distributed *per capita*, in which distribution the Delawares shared equally with the native Cherokees. And again, when, on account of sales west of the 96th degree, Congress on June 16, 1880, appropriated $300,000, such sum was also paid out *per capita* the Delawares sharing equally with the native Cherokees. Such action is of significance in determining the understanding of the parties to the contract" (Cherokee Nation *v.* Journey-cake, 155 U. S., 216).

"The facts of this case are, that the claimant, F. R. Robinson, is a white man; that on the 21st day of September, 1873, in the Choctaw Nation and according to their laws, he married a Choctaw woman by blood, a recognized citizen of the Choctaw Nation; that the said Indian wife died on the 21st day of April 1884, and on August 10, 1884, claimant married a white woman, not a citizen of the Choctaw Nation. * * *

"*The treaty makes every white man who may marry a Choctaw or Chickasaw woman a citizen*, to use the language of the last words of article 28, above set out, '*in all respects as though he was a native Choctaw or Chickasaw.*' By this provision of the treaty there is no difference between a citizen by virtue of his marriage and a native Choctaw. *They are to enjoy equally and alike all of the benefits of Choctaw citizenship, as*

well as share the burdens. Any act therefore, *of the Choctaw council* passed after the ratification of the treaty *which makes a distinction between them, granting to one greater privileges or rights, or imposing on him more burdens than the other, or which shall undertake to enlarge or curtail the rights and privileges which flow from citizenship as to the one and not as to the other, would be in violation of this provision of the treaty and therefore void. An act which puts the white man in any respect in a different attitude or condition than the Indian is void.*

"The Choctaw statute undertakes to deprive the white man who shall lose his Indian wife and afterwards marry a white woman of all rights of citizenship. The marriage has vested a title to the lands in him. This is to be divested from him and he is thereafter to be considered an intruder, subject to be removed from the country under the intercourse laws of the United States. This, too, notwithstanding the fact that his children, *the issue of his Indian marriage,* are Indians by blood and entitled to remain.

"Now, unless a marriage of a native Indian to a white woman, after his Indian wife shall have died, has the same effect on him—that is, decitizenizes him, divests him of all title to the Choctaw lands, and deprives him of the right to live in the country—the statute works an inequality, and the white man does not enjoy the same privileges as the native Indian. The citizenship is different, and the rights flowing therefrom are not the same. The one may do an act that the other cannot do; the one has a privilege, that of marrying a white woman, that the other does not enjoy. The important right of unrestricted selection of a wife enjoyed by the native Indian is denied the white citizen by marriage; and therefore, the provisions of the statute being in conflict with the treaty, are absolutely void; and it makes no difference whether the first marriage was before or after the enactment of the statute. Of course the latter marriage must be in accordance with the laws of the Choctaw Nation.

"I, therefore, find that the claimant is entitled to be enrolled. I also hold *that the offspring of such a marriage would be entitled to be enrolled;* the father being a *lawful citizen, his children would follow his citizenship,* and by inheritance take any property rights he may have acquired thereby; but I do not think that the commissioners who negotiated the treaty ever contemplated that it should extend further and enable a white man, whose Indian wife should have died, to

be in a condition that by his second marriage to a white woman he could, by virtue of such marriage, confer on his white wife citizenship so far that in case of his death she might remarry and confer on her white husband and her children by her second marriage the rights of Choctaw citizenship.

"The action of the Dawes commission in enrolling the claimant is affirmed. Judgment for claimant."

In re Citizenship Cases, Sixth Report of Commission to Secretary of the Interior, 1899.

"When a white person has married a Choctaw or Chickasaw according to their laws, and resides in the Choctaw or Chickasaw Nation, he is in all respects 'as though he was a native Choctaw or Chickasaw,' and his right under the treaty attaches, and it is not within the power of the Choctaw or Chickasaw Nation to take the same away by legislation or otherwise. *It has been said that when adoption takes place by an act of their legislature, the same power that granted can take away. I doubt this proposition, if by the adoption treaty rights have attached, and I am firmly of the opinion that property rights that have attached under the treaty* cannot be taken away and *that only political rights could be thus abrogated.*

"Along the lines herein indicated the citizenship cases pending in this court will be disposed of."

In re Citizenship Cases, opinion of Hosea Townsend, judge, Sixth Annual Report of Commission to Secretary of the Interior, 1899, page 110.

"Full faith and credit will be given to the judgments of the tribunals and commissions in citizenship cases, unless it is made to appear that the tribunal or commission acted without jurisdiction, or that its judgment was procured by fraud, as more fully explained in this opinion. The acts of the Cherokee council in the determination of applications for citizenship in the nation will be regarded as judgments of a court, and will be subject to the same tests as to their validity."

In re Citizenship Cases, opinion of William M. Springer, judge, Sixth Annual Report of Commission to Secretary of the Interior, 1899, page 133.

"DEPARTMENT OF THE INTERIOR,
"OFFICE OF INDIAN AFFAIRS,
"WASHINGTON, *March* 16, 1892.

"SIR: Each member of an Indian tribe has been deemed to have an equal interest in the property of his tribe, whether it be the occupancy of lands or right in the lands or moneys.

"In a property sense, therefore, an Indian is one who is by right of blood, inheritance, or adoption entitled to receive the *pro rata* share of the common property of the tribe. * * *

"One of the most intelligent Indians known in the history of our dealings with the Indians was John Ross, a Cherokee chief, who was a half-breed, yet he was always treated as an Indian, and his descendants are now treated and regarded as Indians.

"Under the rule upon which a family is constructed among civilized nations, the predominant principle is descent through the father. The father is the head of the family. When a man marries, his wife separates herself from her family and kindred and takes up her abode with her husband, assumes his name, and becomes subordinate, in a sense, to him. In many cases the eldest son becomes the heir, and in all social and political arrangements the relationship through the father is the dominant one.

"Among the North American Indians however, the line of the descent in many tribes (though not in all at the present day) is through the mother, and in many instances the wife and not the husband is recognized as the head of the family. Often when the Indian marries, instead of taking his wife to his home he goes to hers and becomes absorbed in her family. But even in tribes having descent in the male line there are notable survivals 'of mother right,' as it is called by some; for example the Dakota mother-in-law (even among the Santees in 1871) can take her daughter from the husband and give to another man. * * *

"*Status of Indian Women Married to Citizens of the United States.*

"Under the date of February 10th, 1855, an act of Congress was approved (10 Stats., 604) which provides that 'any woman who is now or may hereafter be married to a citizen of the United States, and who herself may be lawfully nat-

uralized, shall be deemed herself a citizen.' As the courts have declared that an Indian cannot be naturalized under our general naturalization law (6th Federal Reporter, 256), an Indian woman under the statute just quoted could not, by marriage with a citizen of the United States become a citizen herself. By the act of August 9, 1888 (25 Stats., 392), Congress declared that any Indian woman (except a member of the Five Civilized Tribes) who should thereafter marry a citizen of the United States should be deemed a citizen herself by virtue of such marriage, but that in thus becoming a citizen she would in no way forfeit her rights to an interest in the property of her tribe.

"According to this an Indian woman married to a citizen of the United States prior to August 9, 1888, not only did not become a citizen herself by reason of such marriage, but she did not lose her connection with her tribe nor cease to be an Indian, so that the law of descent among the Indians which is often through the mother, would seem to have included her offspring as members of her tribe.

"The issue of marriages between such white persons and Indians of the tribe into which they have been adopted are therefore, to all intents and purposes, just as much members, of the tribe as are the issue of marriages of Indian members of the tribe of the full blood and just as much entitled to benefits from the common property of the tribe. * * *

"Also, where Congress has required a census to be taken of an Indian tribe (as in the case of the Chippewas (25 Stats., 642) the roll of names submitted of those recognized by the Indians as members of their tribe, including half-breeds and mixed bloods, has been accepted by the executive department of the Government without question as conforming to the requirements of the statute.

* * * * * * *

"It seems to me with my present light that in determining the rights and privileges of mixed bloods we must give to the term 'Indian' a liberal and not a technical or restrictive construction. It must be construed in its historical and not in its ethnological significance. The law of descent must be determined not after Roman or English precedents, but in accordance with Indian usage and our American administrative sanction.

"Any other conclusions announced now as a binding rule having retroactive consequences would result in invalidat-

ing treaties and agreements, disregarding vested rights, and introducing confusion in the entire Indian question.

"Of course when the Indians shall have become citizens of the United States by taking allotments, or otherwise, the law of inheritance, where not fixed by specific statutes will be determined by the common law as applied to all other classes of people.

"Very respectfully, your obedient servant,

"T. J. MORGAN,
"*Commissioner.*

"The SECRETARY OF THE INTERIOR."

Senate, 53d Congress, 2d sess. Ex. Doc. No. 59.

The following case has not been published in any of the law reports which we are able to find.

The opinion was rendered May 24, 1902.

"In the circuit court of the United States, district of South Dakota. Jane E. Waldron, complainant *vs.* The United States of America, Black Tomahawk and Ira Hatch, as Indian agent, defendants. On demurrer to bill, Bartlett Tripp and Charles Deland, solicitors for complainant. James D. Elliott, United States attorney, and William G. Porter, assistant United States attorney for defendants.

"Attorney General Olney, in speaking upon the question here involved, uses the following language: 'The persons entitled to such rights are the persons who, at the time of the agreement, constituted the Sioux Nation and were lawful members thereof. The question, therefore, whether any particular person is or is not an Indian within the meaning of this agreement is to be determined, in my opinion, not by the common law, but by the laws and usages of the tribe, (Ex. Doc. No. 59, 53d Cong.,2d sess., p. 109).

"The cases of the Kansas Indians, 5th Wallace, 737, and Brown *vs.* Steele, 23 Kansas, 473, support the general principle herein stated. Other cases might be cited to the same effect, but it is unnecessary for the purposes of this decision."

"The court has considered the opinions written in the course of the contest upon this land in the Department of the Interior, but it is not persuaded that the rule therein

announced is the correct one to apply to the case under consideration. This court does not hold that all mixed bloods of the Sioux Nation are entitled to allotments, nor that all full-bloods are so entitled, but that in each case the vital question must be: Was the party claiming land in allotment a member of the tribe of Sioux Indians in such a sense as to come within the true meaning of the word Indian, as used in the act of Congress of March 2, 1889. From the facts admitted in this case it must be held that the complainant is an Indian within the meaning of the word as used in the act last cited. The bill otherwise states a cause of action. The demurrer will be overruled and defendant will be given until the July rules in which to answer if they are so advised."

"And it has been held by this court that where a treaty admits of two constructions, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. Hauenstein *v.* Lynham, 100 U. S., 483, 487." (Geofroy *v.* Riggs, 133 U. S., 258, 271.)

"Payment *per capita* must be regarded as a *badge or recognition* of an individual communal interest." (Whitmore *vs.* Cherokee Nation, 30 Ct. Cls., 138).

Respectfully submitted.

THOMAS L. SLOAN,

H. C. BROME,

Attorneys for Appellants.

MAY 3 1904
SUPREME COURT U.S.

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IN THE SUPREME COURT OF THE UNITED STATES.

No. 453 AND TWENTY-TWO OTHER CASES, NUMBERED FROM 454 TO 475, INCLUSIVE.

JOHN M. SLOAN, ET AL.,
APPELLANTS,

VS.

THE UNITED STATES, ET AL.,
APPELLEES.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

PETITION FOR REHEARING.

IN THE SUPREME COURT
OF THE
UNITED STATES.

No. 453 AND TWENTY-TWO OTHER CASES, NUMBERED FROM 454 TO 475, INCLUSIVE.

JOHN M. SLOAN, ET AL.,
APPELLANTS,

VS.

THE UNITED STATES, ET AL.,
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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

PETITION FOR REHEARING.

Having carefully examined the Opinion of the Honorable Court we think with propriety we may ask the Court to consider whether this case be not one in which it will be proper to grant a re-hearing to the appellants on the ground:

First.—That the title to the land upon the Omaha Reservation claimed by the several appellants, and as alleged in the pleadings, arises by virtue of the Treaties of 1854 and 1865.

Second.—That the appellants, having made valuable

improvements upon the lands claimed by them under these Treaties, are entitled to a preference right under the Act of Congress of August 7th, 1882, to select the lands upon which their improvements are located.

Third.—A construction of these Treaties is necessarily involved in order to determine whether or not the appellants are entitled to *any* land upon this Reservation.

Fourth.—A Construction of the Treaty of 1865 is necessary in order to determine whether or not the appellants are entitled to the *particular* land selected by them and upon which they have made *valuable improvements.*

Fifth.—That the appellants are owners of undivided interests of land upon the Omaha Reservation by virtue of the Treaty of 1854, and the Act of August 7th, 1882, is merely the machinery of the Government whereby the land heretofore held in common is assigned to the members of the tribe in severalty.

Finally we respectfully suggest that the court again consider our Reply Brief and the Brief filed herewith.

Wherefore upon the foregoing grounds the appellants pray this Honorable Court to grant to them a re-hearing in their several cases.

H. C. BROME AND
THOMAS L. SLOAN,
Attorneys for Appellants.

I, Thomas L. Sloan, of Counsel for the appellants herein, do hereby certify that in my judgment the foregoing petition for a re-hearing is well founded and presents new matter not heretofore considered, and that the same is not interposed for delay.

THOMAS L. SLOAN.

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SUPREME COURT U.S.

IN THE SUPREME COURT
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No. 453 and Twenty-two Other Cases, Numbered from 454 to 475, inclusive.

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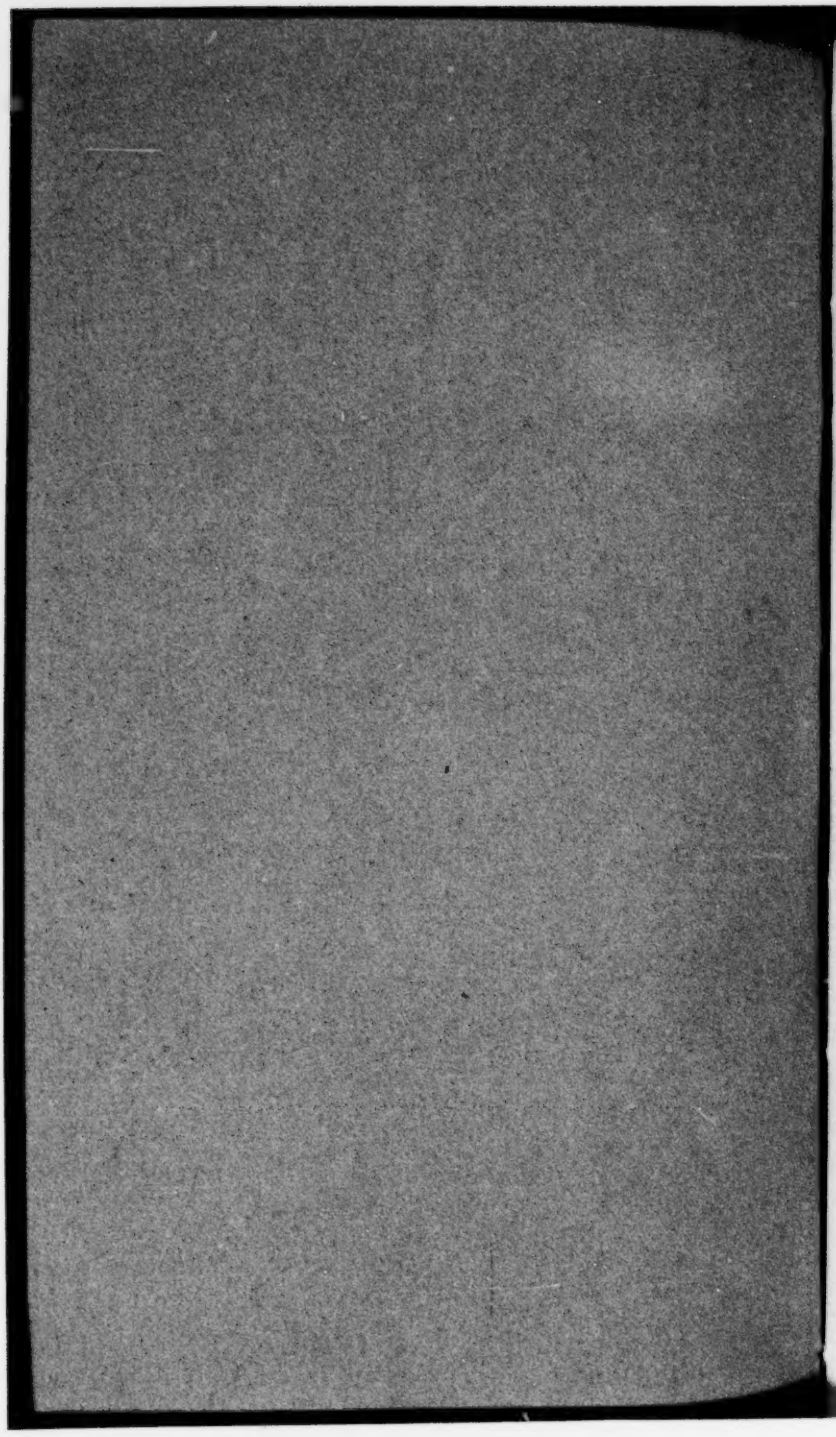
APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF ON PETITION FOR REHEARING.



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IN THE SUPREME COURT
OF THE
UNITED STATES.

No. 453 and Twenty-two Other Cases, Numbered from 454 to 475, inclusive.

JOHN M. SLOAN, ET AL.,
APPELLANTS,

VS.

THE UNITED STATES, ET AL.,
APPELLEES,

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

BRIEF ON PETITION FOR REHEARING.

The Omaha Indian Reservation was created by the Treaty of March 16th, 1854, and by virtue of that Treaty, the appellants, as alleged in their several bills, have a vested interest in all of the tribal land. The fourth article of the Treaty of 1865 alleges the Omaha Indians are desirous of promoting settled habits of industry and enterprise among themselves by abolishing the *tenure in common* by which they hold their lands and by assigning limited quantities thereof *in severalty* to the members of the tribe.

The Act of August 7th, 1882, was passed for the purpose of making an actual division of the land to the respective owners thereof. "Which allotments shall be deemed and held to be *in lieu of* the allotments or assignments provided for in the fourth article of the Treaty with the Omahas, concluded March 6th, 1865, and for which, for the most part, certificates in the names of individual Indians to whom tracts have been assigned have been issued by the Commissioner of Indian Affairs as in said article provided. *Provided*, that any Indian to whom a tract of land has been assigned and certificate issued or *who was entitled* to receive the same under the provisions of said fourth article and who has *made valuable improvements thereon*, and any Indian who being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract, *shall have a preference right to select the tract upon which his improvements are situated for allotment under the provisions of this section.*"

The Treaty of 1865 is fundamental, and this preference right has been exercised as shown by the allegations in the several bills of the appellants and as sustained by the proofs.

The title of the several appellants to lands upon the Omaha Reservation arises by virtue of the Treaties of 1854 and 1865.

The Act of 1882 is merely a partition suit; its purpose being to give to each owner of an undivided interest in the real estate of the Reservation, his portion thereof in severalty.

A construction of these Treaties is absolutely neces-

sary in order to determine whether or not the appellants are entitled to any land upon this Reservation. A construction of the Treaty of 1865 is necessary in order to determine whether the appellants are entitled to the *particular* land selected by them and upon which they have made valuable improvements.

If it is found they are members of the tribe for whom the Omaha Reservation was created by the Treaty of 1854, then the Court is to determine to which class of allottees under the Act of August 7th, 1882, they belong.

As the actual title of the several appellants to the land upon the Omaha Reservation claimed by them in their respective bills rests directly under the Treaties of 1854 and 1865 it cannot be held the construction of these treaties is in "a merely incidental or remote manner drawn in question."

We still believe these cases come within the rule as established in

Mitchell vs. Furman, 180 U. S. 402, and in

Mobile Transportation Co. vs. Mobile, 187 U. S. 479.

"And it has been held by this court that where a Treaty admits of two constructions, one restrictive of rights that may be claimed under it, and the other favorable to them, the latter is to be preferred.

Hauenstein vs. Lynham, 100 U. S. 483-487."

Geofroy vs. Riggs, 133 U. S. 258-271.

Respectfully submitted,

H. C. BROME,

THOMAS L. SLOAN,

Attorneys for Appellants.

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JAMES H. McKENNEY,

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

Nos. 453 to 475.

JOHN M. SLOAN, ET AL., Appellants,

vs.

THE UNITED STATES, ET AL.

Appeals from the Circuit Court of the United States for the District of Nebraska.

MOTION TO DISMISS.

Now come the defendants in each of the above causes and move the court to dismiss the appeals in the above entitled causes, respectively, for the following reasons, to-wit:

1. That this court has no jurisdiction of the said appeals.

2. That none of the said appeals fall within any of the provisions of section 5, of the act of March 3, 1891.

3. That the plaintiffs sued out their respective appeals to this court on the theory that the said actions involved the validity or construction of certain treaties between the United States and the Omaha tribe of Indians: *Whereas*, the said several actions are by the respective plaintiffs, claiming the right to an allotment of lands on the Omaha Indian Reservation under the

provisions of section 5, of an act of August 7, 1882. (22 U. S., 341.)

The right of the respective plaintiffs to said allotments depends upon questions of fact, to-wit: Whether they were respectively members of the Omaha tribe of Indians and residing on said reservation at the time when said act of 1882 was passed. That said respective complainants are not asserting any right under nor claiming any right to an allotment under and by virtue of any treaty.

Jno. L. Webster

Solicitor for Defendants.

31204

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

Nos. 453 to 475.

JOHN M. SLOAN, ET AL., Appellants,

vs.

THE UNITED STATES, ET AL.

Appeals from the Circuit Court of the United States for the District of Nebraska.

BRIEF FOR DEFENDANTS.

The actions involved in this hearing and set out in the record are by mixed blood claimants for allotment of lands on the Omaha Indian Reservation. The suits were brought under the provisions of an act approved February 6, 1901, (31 U. S. Stat., 760) and the allotments are claimed under the provisions of section 5, of an act of August 7, 1882. (22 U. S. Stat., 341).

The objections to the allotments claimed may be summarized as follows:

(a) That the claimants are not members of the Omaha tribe of Indians, and that the act of 1882 did not contemplate allotments to persons not members of the tribe.

(b) That the claimants are descendants of free

born full blood white fathers and take the status of their fathers as white persons, and are not Indians within the meaning of the law.

(c) That the claimants as such descendants of white fathers were not born or reared on the Indian reservation, and have not been adopted into the tribe and are not recognized by the tribe as members thereof.

(d) That the claimants in some instances, and in others their immediate ancestors received allotment of lands on Nehama Reservation under the provisions of Article x of Treaty of 1830 (7 U. S. Stat., 328) and which operated to cut off any further claims on their part to share in the lands of the Omaha Indian tribe.

(e) That the claimants had presented their claims to, and invoked the jurisdiction of the Interior Department, to allot them lands, and their right to allotment had been adjudicated against them prior to the bringing of these suits, and which adjudications are a bar to these actions.

(f) That in any event the claimants have no such vested rights in the particular lands claimed as will justify a court of equity in granting the relief prayed.

A Brief History of the Complainants and Statement of the Case.

As far back as the year 1830, the Omaha tribe of Indians in conjunction with other Indian tribes, foreseeing the conflicts and unfriendly controversies that were liable to arise between the Indians and their mixed blood relatives when the means of supplying livelihood by hunting should fail, and the reservations became limited in area and ultimately to be alloted to the members of the tribe, desired to make some pro-

vision for their mixed blood relatives, and to entirely separate them from the Indian tribe. To that end a treaty was entered into in the year 1830 (7 U. S. Stat. at Large, p. 328) between commissioners on behalf of the United States on the one part and the Confederated Tribes of the Sacs and Foxes; the Medawah-Kanton, Wahpacoota, Wahpeton and Sisseton bands or tribes of Sioux; the Omahas, Iowas, Otoes and Missourias on the other part. A reason for the making of said treaty is set out in the introductory clause thereof, to-wit:

> "The said tribes being anxious to remove all causes which may hereafter create any unfriendly feeling between them, and being also anxious to provide other sources for supplying their wants besides those of hunting, which they are sensible must soon entirely fail them; agree with the United States on the following articles."

By article 10 of said treaty of 1830, there was set apart for the half-breeds of the Omahas and certain other Indian tribes, a reservation commonly known as the Nemaha reservation. This reservation for the half-breeds was set aside at the request of the Omaha tribe of Indians and other tribes acting conjointly with said tribe for the purpose above indicated, and which article reads as follows:

> ARTICLE X. "The Omahas, Ioways and Ottoes, for themselves, and in behalf of the Yanckton and the Santie bands of Sioux, having earnestly requested that they might be permitted to make some provisions for their half-breeds, and particularly that they might bestow upon them the tract of country within

the following limits, to-wit: Beginning at the mouth of the Little Ne-mohaw river, and running up the main channel of said river to a point which will be ten miles from its mouth in a direct line; from thence in a direct line, to strike the Grand Ne-mohaw ten miles above its mouth, in a direct line (the distance between the two Ne-mohaws being about twenty miles); thence down said river to its mouth; thence up, and with the meanders of the Missouri River to the point of beginning; it is agreed that the half-breeds of said tribes and bands may be suffered to occupy said tract of land; holding it in the same manner, and by the same title that other Indian titles are held; but the President of the United States may hereafter assign to any of the said half-breeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section, of six hundred and forty acres to each individual. And this provision shall extend to the cession made by the Sioux in the preceding article."

The intention of the tribes to remove their half-breeds or mixed bloods from the body of the tribe and to make a complete separation further appears from the fact that the treaty was signed at Prairie du Chien, in the territory of Michigan, and the land selected for the half-breed reservation was situate in the southeast corner of what subsequently became the state of Nebraska, and, further, from the fact that the half-breeds were to occupy the said Nemaha reservation and have the same title thereto that other Indian tribes have to their reservation; that is to say, that the Nemaha reservation was to be the reservation for the half-breeds,

and the Omaha tribe of Indians (after the half-breeds should have been separated therefrom) should own the Omaha Indian reservation.

An additional consideration passed from the Omaha tribe of Indians for the benefit of the half-breeds in this, to-wit: that the land selected for the Nemaha reservation formerly belonged to the Otoe tribe of Indians, and it became necessary to compensate the Otoe tribe of Indians therefor. The result was that the Omaha tribe of Indians, with other tribes co-operating with them, paid out of their annuities to the Otoes, the sum of $300.00 per year for the period of ten years, as provided in Article XI of said treaty.

> "ARTICLE XI. The reservation of land mentioned in preceding article having belonged to the Otoes, and having been exclusively ceded by them, it is agreed that the Omahas, the Ioways and the Yancton and Santie bands of Sioux shall pay out of their annuities to the said Otoe tribe, for the period of ten years, three hundred dollars annually; of which sum the Omahas shall pay one hundred dollars, the Ioways one hundred dollars, and the Yancton and Santie bands one hundred dollars."

As a result of said treaty the ancestors of the present complainants moved onto the said Nemaha reservation, and accepted of the benefits of said treaty. By Section 5 of the Act of Congress of July 31, 1854 (10 U. S. Statutes, 332), the President of the United States was directed to cause said reservation to be surveyed and allotted to the persons entitled to the same, in fee simple, and in such manner and under such rules and regulations as he may prescribe:

"And to defray the expenses of the same

there be, and is hereby, appropriated the sum of ten thousand nine hundred and twenty-two dollars and twenty-nine cents."

Subsequently the ancestors of the complainants on either the maternal or the paternal side, and in some instances the present complainants in person, received allotment of lands, in fee simple, upon the said Nemaha reservation, and which they were only entitled to receive on the theory that they had separated themselves from the tribe, and that the tribal lands of the Omaha tribe of Indians should remain for the sole use and benefit of the tribe freed from any claims by these half-breed claimants who entered upon and accepted benefits of the treaty of 1830.

On March 6, 1865, (14 U. S. Statute at Large, 667) a subsequent treaty was entered into between the Omaha tribe of Indians and the United States, by which it was provided, among other things, that the lands of the reservation should be allotted to the members of the tribe, "including their half or mixed blood relatives now residing with them." Two things are made definite and certain by article 4 of said treaty of 1865, to-wit: that the half or mixed blood relatives were spoken of as persons distinct from the members of the Indian tribe, and that neither the tribe nor the United States by said treaty of 1865 recognized any of the half or mixed blood relatives as entitled to reside upon or share in the allotments of the reservation, except such as were then and there residing with the tribe on the reservation on March 6, 1865, and which section by these terms excluded the half-breeds and mixed bloods who were residing on the Nemaha reservation.

"ARTICLE IV. The Omaha Indians being de-

sirous of promoting settled habits of industry and enterprise amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, including their half or mixed blood relatives *now residing with them*, to be cultivated and improved for their own individual use and benefit, it is hereby agreed and stipulated that the remaining portion of their present reservation shall be set apart for said purposes; and that out of the same there shall be assigned to each head of a family not exceeding one hundred and sixty acres, and to each male person, eighteen years of age and upwards, without family, not exceeding forty acres of land—to include in every case, as far as practicable, a reasonable proportion of timber; six hundred and forty acres of said lands, embracing and surrounding the present agency improvements, shall also be set apart and appropriated to the occupancy and use of the agency for said Indians. The lands to be so assigned, including those for the use of the agency, shall be in as regular and compact a body as possible, and so as to admit of a distinct and well defined exterior boundary. The whole of the lands, assigned and unassigned, in severalty, shall constitute and be known as the Omaha Reservation, within and over which all laws passed or which may be passed by Congress, regulating trade and intercourse with the Indian tribes shall have full force and effect, and no white person, except such as shall be in the employ of the United States, shall be allowed to reside or go upon any por-

tion of said reservation without the written permission of the Superintendent of Indian Affairs or the agent for the tribe. *Said division and assignment of lands to the Omahas in severalty shall be made under the direction of the Secretary of the Interior, and when approved by him shall be final and conclusive. Certificates shall be issued by the Commissioner of Indian Affairs for the tracts so assigned, specifying the names of the individuals to whom they have been assigned respectively*, and that they are for the exclusive use and benefit of themselves, their heirs and descendants; and said tracts shall not be alienated in fee, leased, or otherwise disposed of except to the United States or to other members of the tribe, under such rules and regulations as may be prescribed by the Secretary of the Interior, and they shall be exempt from taxation, levy, sale or forfeiture, unless otherwise provided for by Congress."

Pursuant of said treaty of 1865 there was prepared under the rules and regulations prescribed by the department, an allotment book giving the names of the persons who were entitled to allotments, and a description of the lands so alloted and which was certified to and approved by the chiefs of the tribe, and by the Indian Agent, and by the Superintendent of Indian Affairs, and which allotment book was then and there prepared in the manner aforesaid so as to be a judgment and determination between the United States and the members of said tribe, as to who were and who were not entitled to an allotment of lands on the Omaha Indian reservation.

And it is conceded that no one of the complainants were included in said list. The heading recitals

of said allotment or tract book are as follows: (Rec. 171.)

"List of allotments made under the provisions of the IV Article of the treaty of March 6th, 1865, with the Omaha Tribe of Indians, in accordance with the prescribed rules and regulations of the Office of Indian Affairs approved by the Hon. Secretary of the Interior, Oct. 26th, 1867."

NAME OF ALLOTEE.							
INDIAN.			ENGLISH.				
MALE	FEMALE	AGE	SUBDIVISION	SEC.	T.	R.	A.

OMAHA AGENCY, NEBR., 12th Mo. 23, 1870.

We, the chiefs of the Omaha Tribe of Indians, in the State of Nebraska do hereby certify that the persons whose names are enumerated in the foregoing schedule are members of the Omaha Tribe of Indians, and entitled to selections of land in severalty under the provitions of the 4th Article of the treaty of March 6th, 1865, with the Omaha Tribe of Indians, and we further certify that the tract or tracts of land alloted and set opposite their respective names are in accordance with the above treaty, and we recommend that the Hon. Commissioner of Indian Affairs shall cause certificates to be issued to the different persons

named in the foregoing schedule for the different tracts of land as above selected and described.

The selections appearing on first page are set apart for use of Omaha Agency under the above treaty. The names erased by red lines are excepted in the foregoing allotments: (Rec., 182-183.)

Standing Hawk, his X mark. (SEAL)
Yellow Smoke, his X mark. (SEAL)
Fire Chief, his X mark. (SEAL)
Maha Ninga, his X mark. (SEAL)
Hard Walker, his X mark. (SEAL)
Shonga, Skah, his X mark. (SEAL)
Ebahom bah, his X mark. (SEAL)
Lion, his X mark. (SEAL)
Gi he gah, his X mark. (SEAL)

Signed in presence of Louis Saunsoci, his X mark, U. S. Interpreter.

H. CHASE, ex U. S. Int.
T. T. GILLINGHAM, Citizen.

OMAHA AGENCY, NEBR., 12th mo. 23, 1870.

I certify that the foregoing selections of land have been made from the Omaha Indian Reservation in Nebraska as allotments for the members of the Omaha tribe of Indians, whose names are set opposite the tracts respectively under the provisions of the treaty with said Indians, concluded March 6th, 1865, and in accordance with the rules and regulations prescribed by the Hon. Commissioner of Indian Affairs and approved by the Hon. Secretary of the Interior Oct. 26th, 1867. The selections on first page are for use of Omaha Agency under above treaty.

E. PAINTER,
U. S. Indian Agent.

OMAHA, NEBR., 1st Month 7, 1871.

I approve the foregoing selections, and recommend that certificates be issued to the allottees in accordance with the foregoing schedule.

SAMUEL M. JANEY,
Superintendent of Indian Affairs.

"DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN'S AFFAIRS,
January 21, 1871.

The foregoing list of allotments made under the 4th Article of the treaty with the Omaha Indians of March 6th, 1865, recommended by the chiefs and certified to by the agent of said tribe and approved by the Superintendent of Indian Affairs is respectfully submitted to the Secretary of the Interior for his approval.

H. B. CLUM,
(Rec., 185) Acting Commissioner."

"DEPARTMENT OF THE INTERIOR,
January 26th, 1871.

I hereby approve the foregoing list of allotments to Omaha Indians as recommended.

C. DELANO,
Secretary."

The said divisions and assignment of lands to the Omahas in severalty as set down in said allotment or tract book under the directions of the Secretary of the Interior, and having been agreed to by the Omaha tribe of Indians acting through their chiefs and having been approved by the Superintendent of Indian Affairs and approved by the Secretary of the Interior became "final and conclusive." (See the clause of Section 4 of the treaty of 1865 quoted *supra*, p. 6).

It is not claimed by any of the complainants that they were living upon the Omaha Indian Reservation

in the year 1865. They therefore do not come within the clause in Article IV, "including their half or mixed blood relatives now residing with them."

In any event the above allotment under the treaty of 1865 was a "final and conclusive" judgment by the Interior Department, that those named in the allotment book and those *only*, were entitled to allotments of land on the Omaha Indian Reservation.

The result is this, that no one of these complainants can justly claim an allotment of land on the Omaha Indian Reservation unless they can establish that they have become adopted into the tribe since the allotment of 1871 or under some act of Congress particularly conferring that right upon them.

In 1882 it became desirable to sell to white settlers that part of the reservation lying west of the right of way of the Sioux City & Nebraska Railroad Company. Should such sale be made the size of the reservation would become thereby reduced to that extent, and it would become necessary to readjust the allotments of land which had been made under the treaty of 1865. The result was that an act of Congress was passed under date of August 7, 1882 (22 U. S. Stat., 341), providing for the sale of that part of the reservation lying west of the Sioux City & Nebraska Railroad Company. Section 5 of said act provided for the re-allotment to the Omaha tribe of Indians of the remaining part of the reservation.

> "Sec. 5. That, with the consent of said Indians as aforesaid, the Secretary of the Interior be and he is hereby authorized, either through the agent of said tribe or such other person as he may designate, to allot the lands lying east

of the right of way granted to the Sioux City & Nebraska Railroad Company, under the agreement of April 19th, 1880, approved by the Acting Secretary of the Interior July 27th, 1880, in severalty to the Indians of said tribe in quantity as follows: To each head of a family, one-quarter of a section; to each single person over eighteen years of age, one-eighth of a section; to each orphan child under eighteen years of age, one-eighth of a section, and to each other person under eighteen years of age, one-sixteenth of a section; which allotment shall be deemed and held to be in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for which, for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided: *Provided*, That any Indian to whom a tract of land has been assigned, and certificate issued, or who was entitled to receive the same under the provisions of said fourth article, and who has made valuable improvements thereon, and any Indian who, being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract, shall have a preference right to select the tract upon which his improvements are situated for allotment under the provisions of this section: *Provided further*, That all allotments made under the provisions of this section shall be selected by the

> Indians, heads of families selecting for their minor children, and the agent shall select for each orphan child; after which the certificates issued by the Commissioner of Indian Affairs as aforesaid shall be deemed and held to be null and void."

The allotment under Section 5, quoted *supra*, did not contemplate allotments to persons who were not entitled to allotments under the treaty of 1865, but it was the purpose and intent of Congress that the allotments under Section 5, of the act of Congress of 1882, should be to the persons who were entitled to allotments under the treaty of 1865 and to be issued in lieu of the allotments which had been made on the allotment book which had been approved by the Secretary of the Interior, January 26, 1871. Congress in Section 5, said: "which allotments shall be deemed and held to be in lieu of the allotments or assignments provided for in the 4th Article of the treaty with the Omahas, concluded March 6, 1865, and for which, for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs as in said article provided."

It was provided in Article IV of the treaty of 1865, among other things, as follows:

> "Certificates shall be issued by the Commissioner of Indian Affairs for the tracts so assigned, specifying the names of the individuals to whom they have been assigned respectively."

Reading the above clause from Article IV of the treaty of 1865, in conjunction with the above extract from Section 5 of the act of 1882, it becomes very

31211

clear that the allotments under the act of 1882 were to take the place of and be in lieu of the allotments set down in the allotment book of 1871. It further appears from the said readings *supra*, that the Commissioner of Indian Affairs had issued certificates to the allottees in the allotment book of 1871, and that the persons holding said certificates are the persons referred to in Section 5 of the act of 1882.

It will be conceded that no one of the complainants in the various suits made claim to an allotment of land under the treaty of 1865, and it will further be conceded that no one of the complainants had claimed the right to or had received a certificate of an assignment under the allotment of 1871, and, hence, that no one of the complainants in the pending suits fall within the designation of an "Indian to whom a tract of land has been assigned and certificate issued, or who was entitled to receive the same under the provisions of said 4th Article."

Nevertheless, when it became known among the mixed bloods on the Nemaha Reservation that there would likely be or was about to be made a re-allotment of lands on the Omaha Indian Reservation, these complainants, one after an other, began intruding themselves upon the Omaha Indian Reservation, and making claims to lands to which they were not entitled. Some of the complainants made claims without even coming to the Omaha Reservation. The following table will show when the respective complainants came from the Nemaha Reservation to the Omaha Reservation, the length of residence upon the Reservation, and those who have never lived upon the Reservation.

Margaret Sloan, Doc. T, No. 174. Came to Reservation 1881. (Rec. p. 63 and p. 64).

Josephine Mitchell, Doc. T, No. 265. Came to Reservation 1894. (Rec. p. 340).

Emiel Peters, Doc. T, No. 266. Came to Reservation 1887. (Rec. p. 340).

Frank A. Peters, Doc. T, No. 267. Came to Reservation 1885. (Rec. p. 339).

Walter V. Peters, Doc. T, No. 268. Came to Reservation 1886. (Rec. p. 340).

Jacob Peters, Doc. T, No. 269. Came to Reservation 1899; removed 1892. (Rec. p. 340).

Sarah F. McCreary, Doc. T, No. 362. Came to Reservation 1893. (Rec. p. 65).

Jennie M. Arnold, Doc. T, No. 363. Came to Reservation 1890; removed 1892. Rec. p. 489).

Mary Monette, Doc. T, No. 364.. Come to Reservation 1890; died 1893. (Rec. p. 489).

Cassie M. Karch, Doc. T, No. 365. Came to Reservation 1890. (Rec. p. 489).

Thomas Barada, Doc. T, No. 460. Came to Reservation 1889. (Rec. p. 338).

Mary Sailors, Doc. T, No. 461. Came to Reservation 1883. (Rec. p. 339).

Artemesia Frost, Doc. T, No. 462. Came to Reservation 1893. (Rec. p. 65).

Edward Kuhn, Doc. T, No. 502. Came to Reservation 1883. (Rec. p. 338).

Ethel Rutledge, Doc. T, No. 503. Came to Reservation 1883. (Rec. p. 338).

Charles Frost, Doc. T, No. 504. Came to Reservation 1893. (Rec. p. 65).

Calestine Kuhn, Doc. T, No. 505. Came to Reservation 1883. (Rec. p. 338).

Stella Kuhn, Doc. T, No. 506. Came to Reservation 1883. (Rec. p. 338).

Philemon H. Frost, Doc. T, No. 507. Came to Reservation 1893. (Rec. p. 65).

Leonard Frost, Doc. T, No. 508. Came to Reservation 1893. (Rec. p. 65).

Maggie Rockwell, Doc. T, No. 509. Lives in State of Iowa. (Rec. p. 339).

Mitchell Monette, Doc. T, No. 574. Came to Reservation 1891. (Rec. p. 900).

John M. Sloan, Doc. T, No. 579. Never; lives in Aspen, Colorado. (Rec. p. 64).

The Interior Department, acting through Alice C. Fletcher, special U. S. Allotting Agent, in the years 1883-84, made allotments to the Omaha tribe of Indians under Section 5 of the Act of August 7, 1882. Such of the complainants as had then come to the Omaha Indian Reservation made application to the allotting agent for an allottment of land. In each and every instance the allotting agent found against the right of the complainants to an allotment of lands, and reported her findings of fact to the Commissioner of Indian affairs, and in each instance the Commissioner of Indian Affairs found and adjudged that the said complainants were not entitled to an allotment of lands on the Omaha Indian Reservation under the act of 1882. The reports of the special alloting agent, and the findings and rulings of the Interior Department

thereon against the complainants, will be found set out more at length in a subsequent part of this argument.

The Department of the Interior ruled that the act of 1882 related to the treaty of 1865 and that the treaty of 1865 limited the allotment "to members of the tribe, including their half or mixed blood relatives now residing with them." (Rec. pp. 135-6). That these mixed blood claimants were not residing with the tribe in 1865, and manifestly were not beneficiaries under said treaty in respect to the allotments therein provided. That neither the treaty of 1865 nor the act of Congress of 1882 "were intended as a general invitation to all persons, anywhere, who might be able to prove the existence of a drop or more of Omaha blood in their veins, to repair to the reservation and select an allotment. Manifestly such was not the intention, nor will any such construction be admitted in making the allotments." (Rec. pp. 139-141.) Wherefore and thereupon the Department of the Interior under date of October 5, 1883, issued its direction to the Indian Agent to remove the then mixed blood claimants from the Reservation. (Rec. pp. 140-142.)

The Peters family as will be seen from the table set down *supra*, came to the Omaha Reservation between the years 1885 and 1887, which were subsequent to the making of the allotments under the act of 1882, and subsequent to the ruling of the Interior Department against the claims of the mixed bloods who had come upon the Reservation in the year 1883, and subsequent to the direction of the Interior Department to the Indian Agent to remove said mixed bloods from the Reservation.

The Indian tribe became exasperated at the in-

trusion of the Peters family and under date of March 19th, 1888, the members of the tribe transmitted to the Commissioner of Indian Affairs a petition complaining of the intrusion of the Peters family, and requested the Interior Department to remove all these intruders from the tribal lands. (Rec. pp. 142-143.) The Commissioner of Indian Affairs thereupon reported the matter to the Secretary of the Interior, reciting in his said report the complaint of the Omaha tribe of Indians and the former rulings of the Indian Department with reference to the half-breed or mixed blood claimants, who had been provided for under treaty of 1830 by allotment of lands on the Nemaha Reservation, and likewise reciting in said report the rulings of the Interior Department against the claim of the Peters family and the Barada family and the Kuhn family, and in which said report the Secretary of the Interior was requested to determine the rights of the Peters family or their decendents, to land in the Omaha Reservation coupled with the suggestion that a determination of such rights on the part of the Peters family would settle the whole question as to the other mixed bloods similarly situated, and which said report requested authority to remove said Peters and all others of a like class, from the Reservation should the Secretary of the Interior determine that they were not entitled to allotments of land thereon. (Rec. pp. 149-154.)

Subsequently under date of December 5th, 1888, the Secretary of the Interior affirmed and ratified the rulings of the Indian Department, and then and there and thereby entered the final judgment of the Interior Department that Frank Peters (one of the complainants) was "not entitled to allotment of lands on the Omaha Reservation under the treaty of March 6, 1865,

and the provisions of the act of Congress August 7, 1882, and is upon the Reservation without authority and contrary to the wishes of the Omaha Indians." (Rec. p. 155).

The said judgment and order of the Interior Department authorized the Commissioner of Indian Affairs "to remove him (Frank Peters) and any other persons who may be thereon under a similar state of facts, from the Omaha Reservation." That pursuant to the said order and direction, the Commissioner of Indian Affairs instructed the Indian Agent to require Mr. Peters and others of a like class to remove from the Omaha Indian Reservation. Pursuant to said instruction, Robert H. Ashley, U. S. Indian Agent, on the 13th day of September, 1890, served a written notice on Frank A. Peters and others of like class, including Walter Peters, William Barada, Lot Sailors, Celestine Kuhn, Margaret Sloan, Thomas L. Sloan to remove from the Reservation. (Rec. p. 161).

Margaret Sloan in the year 1883 made application to allotting agent, Fletcher, for allotment of lands on the Omaha Indian Reservation, but which allotment was denied to her upon the ground that Margaret Sloan and her descendants were not entitled to allotments under the act of 1882, and the allotting agent under date of April 28, 1884, (rec. p. 146), made official report to the Commissioner of Indian Affairs adversely to the right of Margaret Sloan and her descendants to have allotments of land on the Omaha Indian Reservation, and which report was approved by the Commissioner of Indian Affairs under date of May 9, 1884. (Rec., p. 149).

The Indian Agent, pursuant to authority hereinbe-

fore referred to, to remove the Peters and Sloan families from the Reservation, did, under date of October 17, 1890, make addititional report to the Department "that I did on the 14th day of October, 1890, give written notice to Thomas L. Sloan and Margaret Sloan to leave the Omaha Indian Reservation under instruction of office letter of August 27th." "I would say in explanation that the Omaha Indians in council on the 7th day of October discussed this matter about the Sloans, and it was almost the unanimous opinion and wish that they be removed from the Reservation the same as Peters and others."

On January 12, 1891, a delegation of the Omaha tribe of Indians, duly accredited, appeared before the Interior Department in the City of Washington and protested against these mixed blood claimants being permitted to longer remain upon the Reservation, and thereupon the Commissioner of Indian Affairs reported the said facts to the Secretary of the Interior, recommending that the Secretary of War be requested to furnish military assistance to remove the mixed blood claimants from the Omaha Indian Reservation. (Rec., p. 163.)

Thereafter on the 13th day of January, 1891, the Commissioner of Indian Affairs instructed the Indian Agent that the said mixed blood claimants who were not entitled to lands or other benefits under the act of August 7, 1882, should not be enrolled by the Agent nor receive any share in the payment of annuities, and in said order and direction there were particularly named William Barada, Thomas Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailors and their families. (Rec., pp. 164-165.)

It further appears on the record that none of the

mixed blood complainants had ever been enrolled or received annuities as members of the Omaha tribe of Indians, with the exception that Margaret Sloan and Antoine and Michael Barada had received two or three payments between the years 1855 and 1865, but which was before they had gone upon and received their allotment on the Nemaha Reservation. Artemesia Frost claims to have received one annuity payment in 1875 (Rec., p. 92), and the Agent, Spencer, made one payment to Margaret and Thomas Sloan in 1890, but why or wherefor is not disclosed. (Rec., pp. 66-204 to 211.)

The said Margaret Sloan, Thomas L. Sloan, William Barada, Frank Peters and Walter Peters, becoming advised that they could not be enrolled or receive annuities or allotments of lands, and that it was the intention of the Department to have them forcibly removed from the Reservation as trespassers and intruders thereon, filed a bill in equity in the Circuit Court of the United States for the District of Nebraska against the Indian Agent and members of the tribe, claiming that they, the complainants, were entitled to allotment of lands and to receive annuities, and praying an injunction enjoining the Indian Agent from forcibly removing them from the Indian Reservation, and upon the filing of said bill on the 30th day of January, 1891, an injunction was granted as prayed.

Issues were joined in the said case and a large amount of testimony taken and cause submitted to the court, and on the 25th day of April, 1893, the said court entered its decree dismissing the bill on the ground that the President of the United States is authorized to make such disposition of money and

property as he may think it advisable for the benefits of the Omaha Indians, and that his authority to do so cannot be restrained by injunction. (Rec. folio 106 107.)

The Interior Department having frequently ruled against the claims of these mixed bloods to annuities and allotments of lands on the Omaha Indian Reservation, and the said mixed blood claimants having failed by proceedings in court to obtain relief, resorted to a new expedient, to-wit: to have themselves adopted by the Omaha tribe of Indians, and to that end Margaret Sloan and Thomas L. Sloan procured petitions to be signed by a considerable number of the members of the Omaha tribe of Indians, requesting that their names should be placed upon the rolls as members of the tribe.

It is noticeable that the petition so signed and presented to the Interior Department did not recite that Margaret Sloan and Thomas L. Sloan were entitled to annuities or allotments of lands, but that their enrollment into the tribe might be a benefit to the tribe on account of the ability and character and knowledge of Thomas L. Sloan. To these petitions a vigorous protest was made by certain members of the tribe, and who asserted, among other things, that Thomas L. Sloan was seeking to secure by adoption into the tribe that which he had failed to secure before the Department, and in the United States Court, and that there were no reasons which could be given for the adoption of Thomas L. Sloan which might not be given for the adoption of any other white man. An investigation by the Interior Department disclosed that of the persons who had signed the petitions for the adoption of the Sloan's into the tribe, that twenty-

four of the signatures thereon were not written nor authorized by the person's whose names were set down; that fifteen names were signed twice; and that the petitions contained the names of boys and women not permitted to have a voice in such matters. The question of the adoption of the said Sloans into the tribe having been reported by the Indian Agent to the Commissioner of Indian Affairs, and by the Commissioner reported to the Secretary of the Interior, the Secretary of the Interior found and ruled that the Sloans were not entitled to adoption into the tribe, and in his said ruling and judgment said: "The facts presented seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe, that the Sloan's be not admitted to membership, and it is so ordered." (Rec. pp. 156-158.)

This ruling was again affirmed by the Secretary of the Interior Nov. 17, 1896. (Rec. pp. 165-168).

Subsequently Artemesia Frost, who was a daughter of Margaret Sloan and a sister to the father of Thomas L. Sloan, and who is the mother of the complainants, Philemon H. Frost, Doc. T, 507; Sarah F. McCreary, Doc. T, 362; Charles Frost, Doc. T, 504; Leonard Frost, Doc. T, 508; made an application to the Interior Department, by petition and in person, to be admitted to membership in the Omaha tribe of Indians. The said application was considered by the Commissioner of Indian Affairs, and the facts by him reported to the Secretary of the Interior under date of June 16, 1897, and afterward on the 21st of June, 1897, the Secretary of the Interior made his ruling thereon, and wherein it was adjudged and determined that Mrs. Frost was not entitled to be admitted into membership of the Omaha

tribe of Indians, in which said judgment and rule, among other things, it was said: (Rec. pp. 168, 169).

> "As showing that the Omahas regarded that the claim of such mixed bloods were extinguished by the lands given them under the provisions of the treaty cited, the following provision was made in Article IV (4) of the treaty with them of March 6, 1865. (14 Statutes, 667-668.)
>
> "The Omaha Indians being desirous of promoting settled habits of industry and enterprise among themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, *including their half or mixed-blood relatives* now *residing with them.*" * * *
>
> When many of the mixed bloods from the Nemaha reserve went to the new reservation to acquire more land, after the passage of the act of August 7, 1882 (22 Statutes 341), which provided for the sale of a portion of the latter reservation and allotment of land in severalty, the Omahas strenuously objected and called upon the Department to remove these half-breeds from their reservation.
>
> By her own admission, Mrs. Frost's birthright claim has been extinguished. To admit her present claim would be an injustice to those of the tribe who have never received allotments, and who alone are entitled to participate in the division of the lands in the diminished reserve; would also be against public policy and a violation of the rules and regulations of the Department, which prohibit more

than one allotment to an Indian, for any reason whatever.

It will be one of our points of contention that these various rulings of the Interior Department are adjudications against the rights of these mixed-blood claimants to receive either annuities or allotments of lands on the Omaha Indian Reservation; that said judgments are final and conclusive; that said judgments and rulings were made before the commencement of the present actions; and that the act of Congress under which the present suits are being prosecuted was not intended, neither is it comprehensive enough in its scope and meaning, to confer jurisdiction on the court to reverse said judgments and rulings of the Interior Department.

There are many other matters of detail which we shall have occasion to deal with when we come to consider the cases made on the record by the individual complainants. The foregoing statement and historical recital is intended to deal only with general questions, principles and rulings that may affect the rights of all the complainants.

II

The Act of 1882 Dealt With the Omaha Tribe of Indians and Not With Individuals of Mixed Blood Who Did Not Then Sustain Tribal Relations.

The Allotments in Said Act Contemplated Were Allotments to Persons Who Then Were Members of the Tribe and Residing on the Tribal Lands.

The act of 1882 was an act to provide for the sale

of a part "of the Reservation of the Omaha tribe of Indians."

In the first sentence of the first section there is found this language: "With the consent of the Omaha tribe of Indians expressed in open council, the Secretary of the Interior be and he hereby is authorized to caused to be surveyed, etc."

The above phraseology necessarily implies that the authority of the Secretary of the Interior to cause to be surveyed and sold that part of the Reservation lying west of the Sioux City & Nebraska Railroad, depended upon obtaining the consent of the "Omaha tribe of Indians expressed in open council."

Clearly the words "Omaha tribe of Indians" were not intended to include all persons that might have Omaha Indian blood in their veins, because such persons might or might not be members of the Omaha tribe of Indians. But the words quoted from the first section of the act included only such persons as were then *members* of the "Omaha tribe of Indians," who were authorized to participate in the "council" of said Omaha tribe of Indians.

If we look at Section 3 of the said act we find that the proceeds of the sales of the land to be sold "shall be placed to the credit of said Indians in the Treasury of the United States," "which income shall be annually expended for the benefit of said Indians under the direction of the Secretary of the Interior."

Thus we see again that the act of 1882 was in the nature of a contract, or compact, between the United States and the said Omaha tribe of Indians. The proceeds of the sales of lands were to be expended for the benefit of the said Omaha tribe of Indians. The money was not to be paid by way of annuity to persons

of mixed blood unless they were members of the said tribe of Indians.

We are not dealing with the question whether mixed bloods might or might not be members of a tribe of Indians, or might or might not be adopted into a tribe of Indians, because we grant that under proper circumstances both conditions might exist. But we do insist upon it that a mixed blood who is descended from a free-born white father is not and cannot become a member of the Omaha tribe of Indians, unless such person has been adopted into said tribe with the approval and sanction of the Interior Department.

It is not contended in the case at bar that any one of the complainants has been adopted into the Omaha tribe of Indians. To the contrary, the proofs are that the Interior Department from the year 1883, when allotments under the act of 1882 first began, down to the present date, has repeatedly ruled and persistently adhered to the said rulings that the complainants are not members of the Omaha tribe of Indians, and have not been adopted into said tribe.

All this more particularly appears from the opening historical sketch of these cases and in another paragraph of this brief, wherein the said judgments and rulings are insisted upon as *res adjudicata* in bar of these proceedings.

The Sloan and the Frost families made formal attempts to be adopted into the tribe, but in both cases their right to adoption was denied by the Indian Department and approved by the Secretary of the Interior.

On the record it is quite clear that the complainants were not recognized either by the United States or by the "Omaha tribe of Indians" as members of said

tribe when the act of August 7, 1882, was passed. The rulings of the Interior Department heretofore referred to and hereafter more particularly recited are plain, decisive and often times repeated, that the mixed bloods who went upon the Nemaha Reservation and received an allotment of land thereon had thereby extinguished whatever right, if any, they ever had to membership in the "Omaha tribe of Indians."

Turning to Section 5 of the said act of 1882, we find that the authority of the Sectetary of the Interior to allot the lands lying east of the right of way of said railroad, was dependent upon "the consent of said Indians as aforesaid;" referring again to the consent of the Omaha tribe of Indians to be expressed in open council as provided in Section 1. The allotment provided for in Section 5 is to be "in severality to the Indians of said tribe;" referring again back to the words Omaha tribe of Indians."

The authority of the Secretary under Section 5 was confined to the making of allotments to the members of the "Omaha tribe of Indians." It was not an authority to make an allotment to persons who might have Indian blood in their veins, but who were not members of the said Omaha tribe of Indians who were parties to the act of 1882, and who in open council were to give consent to the sale of the lands lying west of the right of way of the railroad, and to the allotment of the lands lying east of the right of way of said railroad company.

More may be hereafter said upon the point that the act of 1882 was dealing with the Omaha Indians as a tribe, as it then and there existed in its tribal capacity, under the heading that the benefits of the act of 1882 were confined to the persons who were members

of the Omaha tribe of Indians in their tribal capacity at the date when the said law was enacted, and also under the heading that the allotments to be made under Section 5 of the act of 1882 were to be in lieu of the allotments which had been made in 1871 under the treaty of 1865.

III

The Genealogical Status and History of the Complainants is that of White Persons and not Indians. Not being Indians they could not become members of the Omaha tribe of Indians without being adopted into the tribe.

We think the rule of law is that children of a free born white father take the status of the father and not the mother. We shall hereafter see that such is the rule of law announced by the courts, and which has been followed by the Interior Department in dealing with Indian affairs.

All the complainants, with the exception of Mary Monette and her descendants, trace their family history back to Michael Barada, a free born full blood white man, and his wife, Taeglaha Hacienda, an Omaha Indian woman. This appears in the stipulation filed in the Sloan case in Doc. T., 174, (Rec. p. 62) and in the Peters case Doc. T., 267 (Rec., p. 336). From said marriage there descended two children who figure as the ancestors of complainants in these suits, to-wit: a daughter, Margaret Barada, hereafter spoken or as Margaret Sloan, and a son, Antoine Barada. The daughter Margaret and the son Antoine were one-half Indian blood through their mother, but

were one-half white blood and assumed the status of their father, a free born white man. (See table, folio 399.)

Margaret Barada was born about the year 1805. She was taken to the city of St. Louis by her father in 1811 for the purpose of her education, and where she thereafter continued to reside for a long period of years as hereafter recited. In the year 1830 Margaret married a free born full blood white man and a citizen of the United States by the name of Thomas Sloan. Said marriage took place in the city of St. Louis where at the time both parties resided. (See Stip. of Facts Doc. T., No. 174, Rec. p. 62.) That said Thomas Sloan and his wife Margaret continued to reside in the city of St. Louis until the year 1855. Thomas Sloan in 1855 became employed as an engineer on a Missouri River steamboat and his wife Margaret came to the Omaha Agency at Bellevue, Nebraska, and remained about one and one-half years and in 1857 Margaret went with her husband, Thomas Sloan and their children to the Nemaha Reservation—evidently for the purpose of receiving allotment under the act of 1854, for it appears that Margaret Sloan received an allotment on the Nemaha Reservation as a mixed blood Omaha for 320 acres of land. (Rec. p. 63.)

Thomas Sloan was employed by the government in 1858-9 to construct a mill on the Omaha Indian Reservation. He with his family lived on the Reservation during the period of said employment and thereafter returned to the Nemaha Reservation. (Rec. p. 63.)

Margaret Soan came to the Omaha Reservation in 1881 (See par. 5, Stip., Doc. T., No. 174, Rec. p. 62). Margaret Sloan at that time was 76 years of age. Her

husband Thomas Sloan never took up his residence on the Omaha Reservation. He was in ill-health; went east for treatment; and died in Aspen, Colorado, at the Home of his son, John M. Sloan, in the year 1893. (See par. 12, Stip., Doc. T., 174, Rec. p. 63.)

It will be seen from what has been said that Margaret Sloan was the daughter of a free born full blood white man; that she had not been brought up among the Indians as an Indian child, but was brought up and educated and lived with the white race in the city of St. Louis, learning both to speak the English and the French languages; adopted the habits and customs as well as enjoying the benefits of the civilization of the white race. Under these circumstances we insist that Margaret Sloan must be considered in law not as an Indian woman, but as a white woman. That Margaret Sloan could not become a member of the Omaha tribe of Indians except by being adopted into the tribe with the approval of the Interior Department.

Artemesia Frost nee Sloan, John M. Sloan and William E. Sloan were the children of Thomas Sloan and his wife Margaret. The said three children were three-fourths white blood and one-fourth Indian blood, and took the legal status of their father, who was a free-born full-blood white man and a citizen of the United States. The said children were not born on the Indian reservation, but were born in the city of St. Louis, where their parents resided, the dates of their birth being as follows: William E. Sloan, 1832; John M. Sloan, 1840; Artemesia Frost nee Sloan, 1848. The said Artemesia, William E. and John M. Sloan were brought up and educated in the city of St. Louis, the home of their parents, under the customs and

habits of civilized life as enjoyed and practiced by the white citizens of America. (See Stip. Doc. T, 175 par. 7. (Rec., p. 63).

Thomas L. Sloan is the son of William E. Sloan mentioned in the preceding paragraph. William E. Sloan married Catherene Karf, a full-blood white woman, in the city of St. Louis, in the year 1861, where both parties then resided. (See par. 8-9, Stip. Doc. T, 174, rec. p. 63.)

It is our contention that under the decisions of the court and the rulings of the Interior Drpartment that both the father and the mother of Thomas L. Sloan occupied the status of white persons, his mother being full-blood white woman and resident of the city of St. Louis, and his father being three-fourths white blood and the son of a free-born full-blood white man and resident of the city of St. Louis and a citizen of the United States.

Thomas L. Sloan was born in the year 1863 and continued to reside in the city of St. Louis until the year 1873. His father died in 1865, but his mother has continued to live in the city of St. Louis and is residing there at the present time. Thomas L. Sloan remained with his mother in the city of St. Louis until 1873, when he went to his grandmother, Margaret Sloan, on the Nemaha Reservation. He remained with Margaret from 1873 to 1877, when he went away for the period of three years, visiting various places, including Oregon and Washington, on the Pacific Coast, and Holland and Belgium, in Eurepe. He returned to Nemaha Reservation in the year 1880 and came to the Omaha Reservation in April, 1881. Soon after his grandmother came to the Omaha Reservation. Thomas L. Sloan continued to reside with his

grandmother, Margaret Sloan, until the year 1891, when Thomas L. Sloan moved to the town of Pender, state of Nebraska, and where he now resides and is engaged in the practice of law as a profession. (Rec. pp. 63-64.)

Thomas L. Sloan has not been adopted into the Omaha Indian tribe, but it elsewhere appears in this brief that Thomas L. Sloan, with his grandmother, Margaret Sloan, had desired the Omaha tribe of Indians to adopt them as members of said tribe, but as a result it was ordered and directed by the Secretary of the Interior that they be not admitted into membership. (Rec. pp. 156-8 and pp. 165-8.) It also appears that the Omaha tribe of Indians and the Department of the Interior has persistently denied that Thomas L. Sloan (and the other complainants) were members of the Omaha tribe of Indians, and refused them allotments of land on the ground that they were not members of the Omaha tribe of Indians and had ordered their removal from the Omaha Indian Reservation.

Thomas L. Sloan, by his own conduct and pursuit in life for the past ten years, has proven his actual status to be that of a white persons and not an Indian, in that he married a full-blood white woman; is engaged in the practice of law before the courts of the United States; is a citizen of the United States and does not appear to have any affiliation or connection with the Omaha tribe of Indians, except as the attorney for and chief manager of the interests of these complainants in their efforts to wrongfully take unto themselves a part of the lands which rightfully belong to the Omaha tribe of Indians.

John M. Sloan, a son of Thomas Sloan and Margaret Sloan, was born in St. Louis in the year 1840.

He was also educated in the city of St, Louis and continued to reside with his parents in the city of St. Louis until 1855, and was with the family when they lived on the Omaha Reservation in 1858-9 while his father was in charge of the construction of a mill on the Omaha Indian Reservation, and went with the family when they removed to the Nemaha Reservation where his mother received an allotment of land as a mixed blood Omaha. About the year 1880 he removed to the state of Colorado. He is an engineer by trade and is married to a full blood white woman and resides in the town of Aspen in the state of Colorado and has never had a residence on the Omaha Indian Reservation. (See par. 17, Stip., Doc. T. 174, Rec. p. 64.)

Artemesia Frost nee Sloan was born in St. Louis, 1848, and continued to reside with her parents Thomas Sloan and Margaret Sloan, in St. Louis and elsewhere, as did her brothers John M. Sloan and William E. Sloan. In 1870 she married Leonard L. Frost, who was a white man, having one-fourth Indian blood, but not of the Omaha tribe of Indians. (See par. 18, Stip., Doc. T. 174, Rec. p. 65.) Artemesia did not come to the Omaha Reservation to reside until the year 1893, when she was 45 years of age or more. Her legal status was that of her brothers John M. and William E. Sloan, to-wit: that of her father, Thomas Sloan, a free born full blood white man and not a member of the Omaha tribe of Indians. Artemesia Frost nee Sloan made an application to the Interior Department to be adopted into the Omaha tribe of Indians, and the same was reported thereon adversely by the Commissioner of Indian Affairs on the date of June 6, 1897, and afterward on the 21st of June, 1897,

the Secretary of the Interior ruled that Artemesia Frost was not entitled to be admitted into membership of the Omaha tribe of Indians. (Rec. p. 71 and Rec. pp. 168-9.

Philemon H. Frost, Sarah F. McCreary nee Frost, Charles Frost and Leonard L. Frost, complainants, are children of the said Leonard L. Frost and his wife, Artemesia Frost nee Sloan. It is agreed that the father of said Frost children was a white man and did not have any Omaha Indian blood, and that Artemesia, their mother, was the daughter of Thomas Sloan, who was a free-born, full-blood white man. It is further agreed that the said Frost children above named were all born before the date when Artemesia Frost took up her residence on the Omaha Reservation. So that it follows as a matter of course that the said Frost children were not born upon the Reservation. (Rec. p. 65).

Philemon was born in 1870, and was twenty-three years of age when his mother moved upon the Reservation in 1893. Sarah F. McCreary was born in 1872, and was twenty-one years of age at said time, Charles Frost was born in 1873, and was twenty years of age at said time, and Leonard Frost was born in 1876, and was seventeen years of age at said time. (See par. 19, Strip. Doc. T, 174, rec. p. 65). It may be further added as a result that the said Frosts were not children who were brought up among the Omaha tribe of Indians. It is further agreed that the Frost children were educated at the town of Highland in the state of Kansas. (See par. 18–20, Stip. Doc. T. 174, rec. p. 65.)

Sarah F. McCreary married a full-blood white man at Highland, Kansas, where she and her husband re-

31222

sided, and at a time before the Frost family removed to the Omaha Indian Reservation. (Rec. p. 65.)

Thus we see that the Sloan and Frost families are all descendants of white fathers through Michael Barada, Thomas Sloan and Leonard L. Frost, and that Margaret Sloan, the mother of the Sloan's and the grandmother of the Frosts, had but one-half Indian blood, and that William E. Sloan, the father of Thomas L. Sloan, and Artemesia, the mother of the Frost children, had but one-fourth Indian blood through their mother's side; but were white persons through their father, Thomas Sloan, a free-born, full-blood white man, and that no one of said persons have ever been adopted into the Omaha tribe of Indians. That they had all been born, brought up and educated among white people under the usages and customs of the white race and had taken on the civilization of the white race.

Antoine Barada, a son of Michael Barada, a free-born, full-blood white man, and a brother of Margaret Sloan, was likewise educated in the city of St. Louis and lived with his parents in the city of St. Louis and married Josephine Vien, a full-blood white woman; said marriage taking place in the city of St. Louis in the year 1836 where both parties resided. (Rec., p. 337).

Julia Barada, Euphrasia Peters nee Barada, Celestine Kuhn nee Barada and Thomas Barada, are children of Antoine Barada and his wife Josephine Vien, and therefore take the status of their parents, both of said parents being white persons and not Indians within the meaning of the law. The mother being a full-blood white woman and the father a half-blood, but the descendent of Michael Barada, a free-born full-blood white man. The said Barada children

were all born in the city of St. Louis with the exception of Thomas, who was born on the Nemaha Reservation, and the said children were educated in the city of St. Louis, enjoying the advantages and adopting the customs of the civilized white race. (See Stip., Doc. T., 267, Rec., pp. 337-8).

Julia Barada's second husband was M. V. Myers a full-blood white man from whom descended Garry P. Meyers. (Rec., p. 337).

Euphrasia Peters nee Barada, a daughter of Antoine Barada and Josephine Vien mentioned *supra*, was born in the city of St. Louis in 1837. In the year 1856 she married Fulton Peters, a free-born full-blood white man of German descent and a citizen of the United States, the said marriage taking place in the city of St. Louis, where both parties at the time resided.

Fulton Peters and his wife Euphrasia went to the Nemaha Reservation and remained long enough for Euphrasia to receive an allotment of land of 320 acres, and then returned to St. Louis where Peters worked on the construction of the bridge over the Missouri river at St. Louis from the years 1867 to 1874. They first came to the Omaha Reservation in 1883, and remained about two years when they went back to the Nemaha Reservation on the land which had been alloted to Euphrasia. Euphrasia died in 1888, and Fulton Peters still lives on the land allotted to his wife on the Nemaha Reservation. (See par. 10, Doc. T. 267, Rec. p. 338.)

Frank A. Peters, Mary Sailors nee Peters, Maggie Rockwell, nee Peters, Jacob Peters, Emiel Peters, Josephine Mitchell nee Peters are all children of Fulton Peters and his wife Euphrasia, and who therefore

take the status of their father Fulton Peters, who was a free born full blood white man and a citizen of the United States. (Rec. p. 338.)

If our line of argument shall hold good their mother Euphrasia was also a white person and not an Indian, by reason of the status of her father Antoine Barada and of her grandfather Michael Barada. The Peters children recognizing the fact that they were white persons and not Indians became married to white persons. Frank A. Peters married a full blood white woman. Mary Peters married Lot Sailors a full blood white man. Maggie Peters married Edward Rockwell a full blood white man. Jacob Peters married a full blood white woman. Josephine Peters married Walter Mitchell a full blood white man, and none of said persons were educated or brought up among the Omaha tribe of Indians, and have never been recognized as members of said tribe. (Rec. page 339.)

Celestine Kuhn nee Barada was one of the children of Antoine Barada and his wife Josephine Vein, and was therefore a white person and not an Indian by virtue of the status of her father, who was the son of Michael Barada, a free born full blood white man, and of her mother Josephine Vein who was a full blood white woman. Celestine married John Kuhn, who was a free born full blood white man. From John Kuhn and his wife Celestine there was descended *Edward Kuhn, Stella Kuhn, Ethel Kuhn Rutledge*, and from which it will be seen that the said Kuhns and Rutledge, complainants, are white persons and not Indians by virtue of the status of their father John Kuhn, who was a free born full blood white man and likewise through their mothers line of ancestry. None of the Kuhn family have ever been adopted into the Omaha

tribe of Indians, and their claim to annuities and allotment of lands has been constantly and persistently denied by the Omaha tribe of Indians and by the Interior Department.

(See par. 10-14 Stip. Doc. T., 267. Rec. page 338.)

Monette Family. Jennie M. Arnold, Mitchell Monette, David Monette and Cassie M. Karch are descendants of Mitchell Monette, who was a free-born full-blood white man and a citizen of the United States. In 1836 said *Mitchell Monette* married Mary Bono. Mary Bono was a daughter of Francis Bono, a free-born full-blood white man and a citizen of the United States, who had intermarried with Latadawe, a full-blood Omaha Indian woman. Mary Bono taking the status of her father must be treated as a white woman, and being married to Mitchell Monette, who was a white man, the children of the said marriage would be white persons, and not Indians through either line of descent. They certainly were white persons and not Indians by virtue of the status of their father, Mitchell Monette. None of the Monettes were born upon the Omaha Reservation, and none of them were brought up among the Omaha tribe of Indians, and none of them were ever adopted into the Omaha tribe. The Monette family did not move to the Omaha Reservation until the year 1890, and Mitchell Monette, the father, and Mary Monette, the mother, died during the year 1893. (Rec. pp 488-9.)

Jennie M. Arnold, nee Monette, was born in 1862, and married Dr. Arnold, a free-born full-blood white man, in the city of Brownville, in the state of Nebraska, in the year 1882. She thereafter lived with her husband in the city of Omaha until the year 1890, when she came to the Omaha Reservation and re-

mained about two years. In 1892 she removed from the Reservation to the town of Pender, where she engaged in the business of dressmaking until 1894, when she returned to the city of Omaha, and in which city she has ever since continued to live. Mrs. Arnold has two children, Benjamin and Don Arnold, both of whom were born in the city of Omaha. (Rec. p. 489.)

Mitchell Monette, Jr., was born in 1868, and married a full-blood white woman in 1890 and removed to the Omaha Reservation about the same date. (Rec. p. 489.)

Cassie M. Karch, nee Monette, was born in 1872 and married Jacob Karch, a full blood white man, in the town of Pender, state of Nebraska, in the year 1892. (Rec., p, 489.)

It will thus be seen that the members of the Monette family had a free-born, full blood white man for a father, and that each of them had married into the white race. The Monette family have never been adopted into the Omaha tribe of Indians, and their right to receive annuities and allotment of lands on the Omaha Indian Reservation have been persistently and continuously denied by the Omaha tribe of Indians and by the Indian Department.

Tribal capacity and the act of 1882: We have heretofore suggested that the act of 1882 was in the nature of a compact between the United States and the Omaha tribe of Indians in their tribal capacity. The enforcement of the provisions of the act of 1882 were dependent upon the acceptance by and the consent of the Omaha tribe of Indians. That consent was to be expressed in open council. It is quite evident that the United States, by that act, was intending to deal with only such Omaha Indians as were recognized by the

Omaha tribe as members thereof, and who had a recognized right to participate in the councils of the Omaha tribe of Indians.

It is clear beyond question that no one of these mixed blood complainants were recognized by the Omaha tribe of Indians in the year 1882, or at any subsequent time, as members of the Omaha tribe of Indians, neither were they ever recognized as having any right to participate in the councils of the Omaha tribe of Indians. As a matter of fact, none of the complainants were living with the Omaha tribe of Indians in the year 1882, except Margaret Sloan and Thomas L. Sloan, and even they were not recognized as having any affiliation with the Omaha tribe of Indians. The facts seem to us not only persuasive, but convincing, that no one of the complainants were members of the "Omaha tribe of Indians" within the meaning of that phrase as used in the act of August 7, 1882.

IV

Under the Law These Mixed-Blood Claimants Take the Status of Their Fathers and are White Persons and not Indians.

The adjudications of the courts are uniform to the point that the children of free-born full-blood white persons take the status of the father and not the status of the mother. The status of the child cannot be changed so as to transform that child into a member of a tribe of Indians by any process short of an adoption into the tribe with the approval of the Interior department. The mixed blood claimants cannot be heard to say that they are Indians simply because that

they may have a small quantity of Indian blood in their veins. Neither can the fact that some of the complainants or their ancestors may have received an allotment of lands on the Nemaha Reservation, transform them from the status of white persons to the status of Indians. But to this point we shall more particularly deal in another paragraph of this brief.

Expa1te Reynolds, 5 Dillon 394, is a case where the law upon this subject was somewhat elaborately considered in an opinion by Judge Parker. In the syllabi it is stated:

> "The condition of the offspring of a union between a citizen of the United States and one who is not a citizen, e. g., an Indian living with his people in a tribal relation, is that of the father. The status of the child in such case is that of the father. The rule of the common law and of the Roman civil law, as well as of the law of nations, prevails in determining the status of the child in such case."

In determining that case it becomes necessary to ascertain whether the status of Puryer was that of a white person or an Indian. Reynolds had been arrested for the killing of Puryer on the Reservation. It was conceded that Reynolds was a white person by nationality and by birth, and the question remained whether Puryer was an Indian, either by blood or by marriage into the Choctaw tribe. The proofs disclosed that both the father and mother of Mrs. Puryer had Indian blood, but that her paternal grandfather was a full-blood white man, and that she was born and raised in the state of Mississippi.

The court was of the opinion that the fact that Mrs. Puryer had some Indian blood in her veins

through both her father and her mother did not make her an Indian. Upon this point the court said, p. 402:

> "Does the quantum of Indian blood in the veins of the party determine the fact as to whether such party is of the white or Indian race? If so, how much Indian blood does it take to make an Indian, or how much white blood to make a person a member of the body politic known as American citizens? Where do we find any rule on the subject which makes the quantum of blood the standard of nationality? Certainly not from the statute law of the United States; nor is it to be found in the common law."

The court also elaborately considered and ruled on the point that the child took the status of the father, that such was the common law and that there existed no exception to this rule except in the case of an offspring of a connection between a free man and a slave woman. Upon this feature of the law the court said, pp. 403-4:

> "Their offspring follows the condition of the father and the rule *partus sequitur patrem* prevails in determining their status, (1 Bouvier's Institutes, 198, sec. 502; 31 Barb., 486; 2 Bouvier's Law Dictionary, 147; *Shanks vs. Dupont*, 3 Pet., 242). This is the universal maxim of the common law with regard to freemen—as old as the common law, or even of the Roman civil law, and as well settled as the rule *partus sequitur ventrem*—the one being a rule fixing the status of freemen; the other being a rule defining the ownership of property—the one applicable to different political communities or states, whose citizens are in the enjoyment of

the civil rights possessed by people in a state of freedom; the other defining the condition of the offspring which had been tainted by the bondage of the mother.

No other rules than the ones above enumerated ever did prevail in this or any other civilzedcountry. In the case of *Ludlam vs. Ludlam* (31 Barb, 486), the court says: "The universal maxim of the common law being *partus sequitur patrem*, it is sufficient for the application of this doctrine that the father should be a subject lawfully, and without breach of his allegiance beyond sea, no matter what may be the condition of the mother."

The law of nations; which becomes, when applicable to an existing condition of affairs in a country, a part of the common law of that country, declares the same rule. Vattel, in his law of Nations (page 101), says: "As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, these children naturally follow the condition of their fathers and succeed to their rights. * * * The country of the father is, therefore, that of the children, and these become true citizens merely by their tacit consent." Again on page 102, Vattel says: "By the law of nature alone, children follow the condition of their fathers and enter into all their rights." This law of nature, as far as it has become a part of the common law, in the absence of any positive enactment on the subject, must be the rule in this case."

The court in deciding the status of Mrs. Puryer as a result of the application of the foregoing rules of law, held that she was a white person through the

status of her paternal grandfather notwithstanding the fact that the time the murder was committed, she was living among the Choctaws on the Choctaw Reservation. The court said. p. 404:

> "The evidence in the case showing that the paternal grandfather of Mrs. Puryear was a white man, living in the state of Mississippi and not with an Indian tribe—a citizen of the state of Mississippi and of the United States —the principles above enumerated make her father a citizen of the United States, and subject to the jurisdiction of the courts thereof. The same principles would make, Mrs. Puryear a citizen of the United States, and subject to the jurisdiction of the courts thereof. That being the case, Mr. Puryear was married to a woman who was legally a member of the white race, or of the body politic known as citizens of the United States. He did not, therefore, become a Choctaw by marriage, but was a citizen of the United States, and being killed in the territorial jurisdiction of this court, it has jurisdiction, and the writ must be dismissed and the defendant remanded to the custody of the marshal."

If we apply the rule in the above case to the facts in the cases at bar, these mixed blood complainants would be white persons and not Indians, even though they were living on the Omaha Reservation by the consent of the Omaha tribe of Indians. Nothing could transfer them from that status into the Omaha tribe of Indians except adoption into the tribe approved by the Interior Department.

United States v. Ward, 14 Sawyer, 472, (42 Fed., 320) is a case where the defendant was indicted as an

31227

Indian under act of March 3, 1885 (22 Stat., 385). The question presented was whether the defendant, Francisco Ward, was an Indian within the meaning of said statute. The father of Francisco Ward was a full blood negro and his mother was a full blood Indian and the child was born on the Reservation. When very young the child was taken by his father from the Reservation to Los Angeles, where the child continued to reside with its father for a number of years. The child afterward returned to the Reservation and was living on the Reservation at the time when the crime was committed. Nevertheless under these circumstances the court ruled that the child (Francisco Ward) was not an Indian The court in stating the facts of the case said (p. 474):

> "In the present case it is a fact conceded by the respective counsel that the defendant's father was a full-blooded negro and his mother a full-blooded Indian; that he was taken by his father, when very young, from the Reservation, where he was born, to reside with the father in Los Angeles City, and he did so reside for a number of years, but has since returned to and lived on the Reservation, where the offense in question is alleged to have been committed. And the question now raised is whether the defendant is an Indian within the meaning of the act of March 3, 1885."

On the point that the child took the status of the father, and not the status of the mother, the court said (p. 474-5):

> "The statute of the United States nowhere define an 'Indian.' As a matter of fact, the defendant is no more an Indian than he is a negro, and no more a negro than he is an Indian. In the case of the *United States vs.*

Sanders, Hemp., 486, the court held that the quantum of Indian blood in the veins did not determine the condition of the offspring of a union between a white person and an Indian, but further held that the condition of the mother did determine the question; and the court referred to the common law as authority for the position that the condition of the mother fixed the *status* of the offspring. In the subsequent case of *Ex parte Reynolds*, 5 Dillon, 403, the court said that the first point decided in the *Sanders Case* was sustained by the common law, as also the last point, if applied to the offspring of a connection between a freeman and a slave. But in *Ex parte Reynolds* the court pointed out that 'by the common law this rule is reversed with regard to the offspring of free persons. Their offspring follows the condition of the father, and the rule, *partus sequitur patrem*, prevails in determining their *status*. (1 Bouv. Inst. p. 198, sec. 502; *Ludlam vs. Ludlam*, 31 Barb., 486; 2 Bouv. Law Dict., 147. *Shanks vs. Dupont*, 3 Peters, 242.) This is the universal maxim of the common law with regard to freemen—as old as the common law, or even as the Roman civil law, as well settled as the rule, *partus sequitur ventrem*—the one being a rule fixing the *status* of freemen, the other being a rule defining the ownership of property; the one applicable to different political communities or states, whose citizens are in the enjoyment of the civil rights possessed by people in a state of freedom, the other defining the condition of the offspring which had been tainted by the bondage of the mother. No other rules

than the ones above enumerated ever did prevail in this or any other civilized country."

United States vs. Hadley 99 Fed. Rep., 437, is an interesting case by reason of the circumstances surrounding the life of Hadley. Hadley was more of an Indian than any of the complainants in this suit, as he was one-half Indian blood. That he went onto the reservation with his parents when he could not have been more than seven years of age, and thereafter continued to reside on the reservation and received an allotment of land, and yet it was ruled that he was not an Indian and could not be indicted as such under the act of March 3, 1885. The agreed facts as recited in the opinion are, p. 438:

> "It is agreed that the parents of the defendant were married under the laws of the territory of Washington in 1873; that the father is a white man and a naturalized citizen of the United States, and that the mother is an Indian and a member of the Yakima tribe of Indians; that the defendant was born off the reservation, in the county of Yakima, and went there with the parents to reside in 1881, where he now resides; that he has received land as an allotment under the act of congress of 1887, has his patent therefor, and is now holding said land."

On the point that Indian half-breeds who are born under the sanction of marriage, and whose father is a white man and not Indians the court said, p. 438:

> "Another class of Indian half-breeds are born under the sanction of marriage, the father being a white man and a citizen, and maintaining an independent home; and the mother, al-

> though an Indian, is, by her marriage and adoption of the habits of civilized life, entirely separated from her Indian tribal relatives. The half-breed children of such parents, born within the United States, reared and educated as other children of citizens, are by the provisions of the fourteenth amendment to the constitution, and by section 1992, Rev. St., made citizens of the United States, and are, in the eyes of the law, entitled to all rights, privileges and immunities of other citizens; and they are as distinct from the other class of half-breeds which I have described as any other civilized people are distinct from savages."

The court also ruled that the child took the legal status of his father and was a citizen of the United States. His status was fixed by his birth, and it was not changed by the fact of his subsequent residence on a reservation nor by the receiving of an allotment of land. On this point the court said, p. 438:

> "According to the admitted facts, the defendant in this case is by law given the legal status of his father, and is by birth a citizen of the United States; and I hold that he is not subject to indictment and trial in this court for an offense which is cognizable in this court only when committed by an Indian. The status of the defendant was fixed by the circumstances of his birth, and could not be changed by his subsequent residence upon an Indian reservation, and receiving and holding an allotment of Indian lands."

If the principles announced and applied to the facts in the above case be correct, no one of the com-

plainants in the pending suits can claim an Indian birthright, but all of them are white persons and citizens of the United States, for such was the status of their respective fathers.

The case of *Keith v. United States*, 8 Okla., 446, applied the same rule of construction to an act of congress of February 8, 1887, allowing Indians not residing upon a reservation to make settlement upon public lands and "to have the same allotted to him or her * * * as provided in this act for Indians residing upon reservations."

Keith claimed the right to an allotment from the public lands on the ground that he "was a member of the Arapahoe tribe and enjoyed all the rights of a member of such tribe." But the court ruled that these general averments were "controlled by the several special statements of fact made in the petition that he was born from a marriage between a white father, adopted into the tribe when a child, and a half-breed Indian woman.

The court said: p. 449.

> "The question was presented in *Ex parte Reynolds*, 5 Dill., 394, Fed. Cas. No. 11,719, and it was there concluded that the Indians being free persons, the common law rule that the offspring of free persons follows the condition of the father prevails in determining the status of the offspring of a white man, a citizen of the United States, and an Indian woman. The case was cited in the opinion of Assistant Attorney General Shields to the Secretary of the Interior, November 27, 1891, (13 Land Dec., 685) and the rule reannounced in the declaration that "children of such parents are therefore by birth not Indians, but citizens of

> the United States, and consequently not entitled to allotments under the act of March 2, 1889," which provided for allotments to the members of the tribe to which this woman belonged. The ruling made in *Ex parte Reynolds* was also cited and followed in the case of *United States v. Ward*, 42 Fed., 320, and will be followed here."

The principles of law announced in the above cases has been the basis of the rule established by the Interior Department. Some of the complainants in the pending suits put stress upon the point that they have occasionally received annuity payments. It is claimed that Margaret Sloan and Antoine Barada received occasional annuties between 1862 and 1865; that Artemesia Frost claims to have received an annunity in 1875; and Margaret Sloan and Thomas L. Sloan claim to have received one annunity from Indian Agent Spencer. But these incidental circumstances do not make said persons either Indians or members of the Omaha tribe of Indians.

Such circumstances connected with birth were presented and considered by the Interior Department in *Black Tomahawk v. Waldron*, 13 Land Dec., 683. The question presented in said case was whether Jane E. Waldron, claiming to be a Santee Sioux Indian, was "entitled to the allotment of lands on the ceded portion of the Great Sioux Reservation for which she is contending against Black Tomahawk," and to receive annuities.

The Secretary of the Interior referred the case to Assistant Attorney General Shields, who, in his opinion to General Noble, Secretary of the Interior, took the position that Mrs. Waldron was not an Indian, and

hence not entitled to an allotment of land. In his statement of the facts he said (p. 685):

> "It is clearly shown, however, that Mrs. Waldron's father, Arthur C. Van Meter, is a white man and a citizen of the United States. Her mother is a half-blood Indian, being born of half-blood parents, each of whom was the offspring of a union between a white man and an Indian woman. Where these parents of Mrs. Van Meter lived, whether with the Indians as members of some tribe or among the whites as citizens of the United States is not shown."
>
> It is admitted by all that Mrs. Waldron's name has since 1883, or 1884, been born upon the rolls at the Cheyenne River Agency, and that she has since then been receiving rations at the Agency."

In his statement of his conclusions, he quoted the cases of *Ex parte Reynolds*, 5 Dill., 394, and *United States v. Ward*, 42 Fed., 320, and proceeds, p. 686:

> "Under the rule laid down in the decisions cited, which rule is, in my opinion, a sound one and applicable to the case in consideration, Mrs. Waldron was born a citizen of the United States. Her claim that she is an Indian by virtue of being born of an Indian mother cannot be allowed. There is no allegation that she has taken steps to renounce her allegiance to the United States or to assume the rights and duties of a citizen of any other nation, tribe or people. The mere fact that her name was placed upon the roll of the Cheyenne River Agency and that she has for several years received rations as an Indian, is not suf-

ficient to sustain a claim of membership in that tribe."

He therefore concluded that Mrs. Waldron was not entitled to receive annuities and not entitled to an allotment of land.

The Secretary of the Interior, General Noble, in his opinion to the Commissioner of Indian Affairs, says, p. 684:

> In respone, I transmit herewith copy of an opinion of the Hon. Assistant Attorney General for this Department, in which I concur, wherein it is held that Mrs. Waldron is not an Indian, and was not at the date of the act of March 2, 1889, entitled to receive rations and annuities at the Cheyenne River Agency."

Black Tomahawk v. Waldron, 17 Land Dec., 457, is a rehearing of the case cited *supra*, (13 Land Dec., 683,) and the questions involved were elaborately considered in an opinion by Asst. Attorney General Hall to the Secretary of the Interior, August 18, 1893, and which was approved by the Secretary of the Interior. In that opinion were considered three questions pertinent to the issues in the pending cases, to-wit:

1. Mrs. Waldron took the status of her father who was a white man and not the status of her mother who was a half-breed Sioux Indian.

2. Where it was intended either by treaty or act of Congress to provide for such mixed bloods, they were so mentioned in the said act or treaty and are not included within the terms of an act or treaty which speaks only of the Indian tribe.

3. The treaty of 1830 was intended to separate the mixed bloods from the tribe, and the acceptance of

an allotment on the half-breed reservation extinguished the tribal rights.

By reason of the foregoing considerations we quote liberally from said opinion, pp. 460-464:

> As to the claim that, because the maternal great grandmother was an Indian. Mrs. Waldron is also an Indian, it is to be observed that under common law rule children follow the condition of the father and not of the mother. Under this rule, without going further back, Mrs. Waldron's father being a full blooded white man, she would be regarded as a white woman. But it is said that the civil law rule relating to slaves prevails among the Indians and the children follow the condition of the mother. If this be true, for reasons hereinafter stated, it is yet very doubtful if Mrs. Waldron's case is made out. * * * *
>
> In answer to the claim that the rule is changed in Indian tribes, he said:
>
> But in my researches I have not found that such a rule exists to the extent claimed. The counsel for Mrs. Waldron, in seeking to show the existence of the rule, refers to the desire shown on the part of the Indians to care for the half-breeds, mixed-bloods, and white men who have married Indian women, and cites quite a number of instances in different treaties with Indian tribes wherein special provision was made for the benefit of the classes spoken of; and to the list given by counsel might be added many more similar instances. From these facts he seems to argue that the rule was general that all such were regarded as entitled to share equally, with the Indians negotiating the treaties, in the benefit thereof.

It seems to me that the facts and citations, made by counsel irresistibly lead to the contrary conclusions, and show it was not thought by either party to the treaties that the general provisions thereof, in favor of the Indians of the respective tribes, were applicable to the half-breeds, mixed blood or squaw men, as the whites who marry Indian women are called, but that special provisions were necessary to include them.

* * * * * *

That Mrs. Waldron's mother and grandmother did not claim to be and were not regarded as Sioux Indians, entitled to participate in the tribal rights and share in its property, is abundantly shown by the fact that as half-breeds they claimed the benefit of Article 9 of the treaty of July 15, 1830, *infra*, setting apart the separate Reservation for the half-breeds, and under the act of July 17, 1854, received Sioux half-breed scrip in payment for their interest in said Reservation, an interest separate and apart from any possessed by the Sioux Indians proper, who were not recognized as having any right or interest in that Reservation, and received no part of the scrip authorized to be issued in payment therefor. The records of the Indian Office show that Mrs. Waldron's mother and grandmother received each scrip for four hundred and eighty acres, their allotted proportion of the land within said Reservation, the scrip issued to the Angie family aggregating 3,840 acres.

It seems to me that Mrs. Waldron's claim to an allotment in the Great Sioux Reservation might here be dismissed without further dis-

cussion, for, after these half-breeds thus had a large and valuable portion of the tribal property bestowed upon them, which, when divided, gave to each half-breed and each descendant of the mixed blood four hundred and eighty acres of land to sell, and which they did sell, it is hard to believe that it is the intention of the government to force the Sioux Indians to again divide their inheritance with them, or that it is the wish of the Indians to share equally with these remote descendants of ancestors, who themselves were not permitted to share equally with the tribe, because not of the full blood."

In *Ulin v. Colby et al.*, 24 Land Dec., 311, it was decided by the Secretary of the Interior, March 30, 1897, that children born of a white man, a citizen of the United States, and an Indian woman, his wife, follow the status of the father and are not entitled to allotments as Indians.

United States v. Higgins, 103 Fed., 348, may be cited against our point of contention, but it is not when its facts are considered, and the rule there announced cannot be of any avail to the complainants.

The question in the case was whether Alexander Matt was an Indian or a member of the Flat Head tribe of Indians, so as not to be subject to taxation under the laws of the state in which he resided. The facts of the case were these: The father of Alexander Matt was a Canadian Frenchmen, his mother a Piegan Indian. He was born in the year 1853 in what is now known as Montana, but which at that time was known and classed as Indian country. In 1866 or 1867 the parents of Alexander Matt moved into the Bitter Root Valley, among the Flat Head Indians. "Shortly after

the arrival of the father and mother of Matt in the Bitter Root Valley, his mother was adopted into the Flat Head tribe." The said adoption was so made at a council meeting of the chiefs of the tribe. "From that time on she and her children were recognized as members of the Flat Head tribe." The family moved to the Flat Head Indian Reservation, where Alexander Matt has continued to live for a period of 20 years.

The court said: "The evidence shows that the said Matt had been recognized as a member of the Flat Head tribe of Indians ever since his residence therein."

From the above statements it will be seen that the case on the facts is just the reverse of the status of the complainants in the pending suits. Neither the complainants nor their mothers have been adopted into the Omaha Indian tribe. Wherever adoption has been applied for it has been denied. (See the Sloan and Frost cases). No one of the complainants has been recognized as a member of the Omaha tribe of Indians for the last twenty-six years, as was Alexander Matt. The Omaha tribe of Indians have constantly and persistently refused to recognize the complainants as members of the Omaha Indian tribe, and both allotments and annuities have been refused them.

In the opinion the court said:

> "In determining as to what class half-breeds belong, we may refer them to the treatment and recognition the executive and political departments of the government have accorded them."

It will be noted that in the pending cases the executive and political departments of the government have denied that the complainants in the pending

suits are members of the Omaha tribe of Indians. If that principle is to control in the pending cases, the complainants are not Omaha Indians.

What was said by the court in the Higgins case applied only to *half-breeds* who lived with and were recognized by the Indians as members of the tribe. The court was only speaking of those who have *at least* one-half Indian blood in their veins. Such is not the condition of the complainants, as no one of the complainants is more than one-fourth Indian blood, and the majority of them only one-eighth or less.

In a subsequent part of this brief it will be made to appear that the living upon the Nemaha Reservation by certain of the complainants was not living in the Indian country and was not living with the Indian tribe. The lands of the Nemaha Reservation were allotted and patented to the mixed bloods in fee simple. When they accepted these patents they became merged into the general mass of inhabitants and citizens of the then territory of Nebraska.

Jefferies v. Ankeney, et al., 11 Ohio, 372 is a case where it was ruled that the child of a white man and a half-breed Indian woman was a white person under the constitution of the state of Ohio.

Lane v. Baker, et al., 12 Ohio, 237 is a case decided upon the same principle, in which it was ruled that Thomas Lane who had "more than one-half white blood," but who had both Indian and negro blood, was held to be a white person within the meaning of an act of the legislature relating to common schools which conferred its privileges upon "white persons."

If it be true that under the common law (and which has not been changed by any act of Congress upon the subject) that the children of free born white parents

take the status of the father it necessarily follows that the children of free born full blood white persons who are citizens of the United States, cannot put aside that status and become Indians or members of an Indian tribe without the consent of the United States.

> In *United States v. Boyd*, 83 Fed., 547, it is said:
> "The action or assent of the United States is absolutely essential in order to enable the Indian tribes or bands, or individual members of the same, to renounce the dependent condition caused by the state of pupilage in which the Indians have been since the adoption of the federal constitution."
>
> In *Elk v. Wilkins*, 112 U. S., 94, it is said:
> "The alien and dependent condition of the members of the Indian tribes, could not be put off at their own will, without the action and assent of the United States."

The converse of the proposition must be equally true; that citizens of the United States and the children of such white fathers cannot put aside their status, their duties and obligations as such, and become members of an Indian tribe, without the action and assent of the United States.

We have heretofore made the suggestion that the fact that Thomas Sloan, father of the Sloans, and Fulton Peters, father of the Peters family, and John Kuhn, the father of the Kuhn family, and Mitchell Monette, the father of the Monette family, were white men who had married women of mixed Indian blood, would not make them nor their children Indians, even though they were permitted to live for a time upon the Indian Reservation.

This direct question was ruled in *Stiff v. Mc-*

Laughlin, 19 Mont., 300. There the court said:

> "The marriage of a man not an Indian, to an Indian woman does not give him the status of a tribal Indian, nor does he acquire such a status from the fact that he resides upon an Indian Reservation with an Indian wife. Unless in the government's treaty with the Flat Head Indians themselves, or under some act of congress, a right was expressly given the Flat Head Indians to adopt persons other than tribal Indians of Washington territory into their tribe, no court would be justified in holding that any such right existed. Their treaty gave no such right to the Flat Heads as we have stated, and we know of no law conferring any such right. Nor from the fact that the United States authorities permitted Sloan to reside on the Reservation can it be reasonably inferred that he had acquired, or that it was intended by the government that he should acquire, the status of a tribal Indian."

Certainly this record is full of evidence that the Omaha tribe of Indians never interpreted the treaty of 1865 not the act of Congress of 1882 as including these mixed-bloods. For more than 20 years the tribe has been resisting the claims of these plaintiffs, hence these suits.

V

The Claims of the Complainants for Allotments of Lands on the Omaha Reservation Had Been Heard and Adjudged Against Them by the Department of the Interior Before the Bringing of the Present Suits Such Judgments Are Final and Conclusive, as The Courts Not Given Jurisdiction Under The Act of 1901 to Review or Reverse Said Judgments of the Interior Department.

We conceive the purpose of the act of 1901, was to confer upon the United States Circuit Court original jurisdiction to hear and determine the rights of a claimant to an allotment of land upon an Indian reservation. In other words, it is made a court of original, and not appellate jurisdiction in said matters. The Department of the Interior is at all times possessed of jurisdiction to determine and adjudicate upon the rights of claimants to allotments of lands on Indian reservations. The jurisdiction of the Interior Department still remains in force and effect. Prior to 1901 the Interior Department had exclusive jurisdiction over such matters. The act of 1901 conferred co-ordinate jurisdiction upon the Federal Courts.

The Federal Courts, under the act of 1901, have no right to sit as an appellate tribunal, to reverse the findings and judgments of the Interior Department theretofore rendered. Neither has the Interior Department any such right to review or reverse the judgments of the Federal Court rendered in such matters under the said act of 1901. The scope and purpose of the act of 1901 was to permit the claimant to assert his

right in the Federal Court, and have the same there litigated and determined, instead of being required to litigate his claim before the Interior Department. But it is equally true that if the claimant selected either the courts or the Interior Department as a tribunal through which he would litigate his claim, that such selection, when made and carried to a conclusion, would estop him from re-litigating the same claim in the other tribunal.

Having said this much by way of introduction to the interpretation to be put upon the act of 1901, let us look into the various findings and judgments which have heretofore been rendered against the rights of these mixed-blood claimants.

First Judgment. The Allotment Book under the Treaty of 1865, Approved January 26, 1871.

We have heretofore set out the proceedings had between the Omaha tribe of Indians and the Interior Department under the provisions of Article IV of the treaty of 1865, by which it was then and there determined who were the members of the Omaha tribe of Indians and entitled to share in the allotment of lands under said treaty on the Omaha Indian Reservation. (Rec. pp. 171-185,)

Under the 22d paragraph of the stipulation Doc. T, 174, it is recited: (Rec. p. 65, folio 98.)

> "That no one of either the Sloan, Barada, or Frost families mentioned in this stipulation received or had an assignment or certificate of assignment under Article 4 of the treaty of March 6, 1865 (14 U. S. Stat., 667). That a schedule of selections of land in severalty in accordance with said fourth article, showing

the names of those entitled to assignments of lands and their respective tracts, was duly certified by the chiefs of the Omaha tribe, and certified and submitted by the Omaha Indian Agent to the Commissioner of Indian Affairs, December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871. That none of the names of the respective Sloan, Barada or Frost families in this stipulation mentioned appear on said schedule."

In the stipulation in the Peters case, Doc. T. 267 it is recited, (par. 24, Rec., p. 340):

"That no one of either the Barada, Sloan, Peters, or Frost families mentioned in this stipulation, received or had an assignment or certificate of assignment under Article 4, of the treaty of March 6, 1865, (14 U. S. Stat. 667). That a schedule of selections of land in severalty in accordance with said fourth article and the prescribed rules and regulations of the office of Indian Affairs, approved by the Hon. Secretary of the Interior, October 26, 1867, showing the names of those entitled to assignments of lands and their respective tracts duly certified by the chiefs of the Omaha tribe, and certified and submitted by the Omaha Indian Agent to the Commissioner of Indian Affairs, December 30, 1870, and approved by the Secretary of the Interior January 26, 1871. That none of the names of the respective families in this stipulation mentioned appear on said schedule."

In the stipulation relating to the Monette family Doc. T., 364, it is recited in par. 10: (Rec., p. 489).

"That no one of the Monette family or their ancestors mentioned in this stipulation re-

ceived or had an assignment or certificate of assignment under Article 4 of the treaty of March 6, 1865, (14 U. S. Stat., 667). That a schedule of selections of land in severalty in accordance with said fourth article and the prescribed rules and regulations of the office of Indian Affairs, approved by the Hon. Secretary of the Interior, October 26, 1867, showing the names of those entitled to assignments of lands, and their respective tracts was duly certified by the chiefs of the Omaha Tribe, and certified and submitted by the Omaha Indian Agent to the Commissioner of Indian Affairs, December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871. That none of the names of the respective Sloan, Barada, Peters, Frost, or Monette families in this stipulation mentioned appear on said schedule."

We have heretofore said that the allotment under the treaty of 1865 was a "final and conclusive" judgment by the Interior Department; that these named in the allotment book and these *only* were entitled to allotments of land on the Omaha Indian Reservation.

Indeed there is no claim made by any of the complainants that either they or their ancestors were living upon the reservation, or were participating in membership in the Omaha tribe of Indians when the said allotment was made under the treaty of 1865. Neither is it claimed that any one of the complainants or their ancestors were "half or mixed blood relatives now residing with" the Omaha tribe of Indians, as provided in article 4 of said treaty of 1865.

Second Judgment, Euphrasia Peters Denied Allotment August 9, 1883.

A. C. Fletcher was appointed special United States Allotting Agent for the purpose of making allotments of lands on the Omaha Indian Reservation under the provisions of the act of 1882, and was such official during the years of 1883 and 1884. Euphrasia Peters, with her husband Fulton Peters, moved on the Omaha Reservation in 1883, and remained about two years when they returned to the lands patented to them on the Nemaha Reservation, and where Euphrasia died in the year 1888. (See par. 10 stip. Doc. T., 267, rec. p. 338).

Euphrasia was the mother of the various complainants by the name of Peters, including Mary Sailors, Maggie Rockwell and Josephine Mitchell, (rec. p. 338). In 1883 Euphrasia Peters made application to the alloting agent for an allotment of lands on the Omaha Reservation, and on which application the allotting agent made the following report to the Commissioner of Indian Affairs: (Rec. p. 134).

"UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY,
July 28, 1883.

HON. H. PRICE,
Commr. of Indian Affairs:

SIR:—I have the honor to submit the following typical case, and ask the approval of my decision.

Euphrasia Peters is the oldest of seven children of Antoine Barada, a half-breed Omaha, who has lived all his life apart from the Omahas.

Antoine married a French woman and his

31237

children were born and reared in St. Louis. Euphrasia, some 25 year ago married Mr. Peters, a white man, by whom she had several children.

All the Barada family took land in the half-breed Nemaha Reserve. Mrs. Peters' portion has dwindled to eighty acres and this is now mortgaged. After the passage of the bill, approved August 7, 1882, at the instance of her sister, Mrs. Provost, Mrs. Peters came up to the Omaha Reserve to establish her relationship and claim land here.

Mr. Peters is a carpenter and did service at St. Louis and on the Mississippi River for the government during the late war. He has excellent credentials as to character, and so has his wife.

According to the letter from the Secretary of the Interior dated June 1st, 1883, and enclosed in one from the Indian Bureau, I am instructed to carry out the allotments as "the law directs."

After careful consideration of just what that may mean, I have concluded that it means in accordance with Art. 4 of the treaty of 1865, of which the Act of August 7, 1882, is supplementary. Art. 4, of the treaty of 1865, defines those entitled to lands to be "the members of the tribe, including their half or mixed blood relatives now residing with them." This article therefore excludes all of the class of Euphrasia Peters from sharing in the present division of the land; moreover, the Indians, through their councilmen, inclined to insist upon a strict construction of this Art. 4. Since my arrival a full council has been held on the

subject of admitting these mixed bloods from Nemaha and elsewhere, at which Mrs. Peters and her sister were present, and the voice of the councilmen and the people was unanimous that mixed bloods be not allowed to take land under the present Act. It was urged that there would not be land enough for all the new comers and for members of the tribe living here. This objection is a serious one, and I know it to be well taken by my personal field observations.

The Omahas cannot afford to give these outsiders of their best land.

Therefore, in view of Article IV of the treaty of 1865, and of the unanimous wish of the tribe expressed in open council, I decide that Mrs. Euphrasia Peters is not entitled to an allotment of land on the Omaha Reserve.

Very respectfully,

A. C. FLETCHER,

Special U. S. Indian Agent."

The said report was approved by the Commissioner of Indian Affairs under date of August 9, 1883, as follows: (Rec. p. 136.)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, August 9, 1883.

MISS ALICE C. FLETCHER,
Special Agent for the Interior Department, Omaha, and Winnebago, Agency, Nebraska.

SIR:—In reply to your letter of 28th ultimo, you are advised that your decision to the effect that Mrs. Euphrasia Peters is not entitled to an allotment of the land on the Omaha Re-

serve, is approved by me in view of your statements.

Respectfully,
H. PRICE,
Commissioner.

Third Judgment. The Case of Celestia Kuhn.

Celestia Kuhn was a sister of Euphrasia Peters and a daughter of Antoine Barada and his wife, Josephine Vein. Her case was similar to that of the Baradas and the Peters family, and she is the mother of complainants, Edward Kuhn, Stella Kuhn and Ethel Kuhn Rutledge. (Rec. p. 338.) Her case was reported to the Commissioner of Indian Affairs, under date of September 4, 1883. (Rec. p. 136.)

UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY,
Sept. 4, 1883.

HON. H. PRICE,
Commr. of Indian Affairs,

SIR: Your letter of July 30, marked L. 13664-83, in reference to the claim of Celestia Kuhn, to an allotment of land on the Omaha Reserve, and enclosing copy of her letter to Judge Dundy of Omaha, Neb., craving his influence with the Department in her behalf, is received.

The facts of the case are as follows:

Celestia Kuhn is one of the seven living children of Antoine Barada, an Omaha half-breed. She was born of a white mother (French) in St. Louis, and has lived all her life away from the Omaha tribe. She has at the present time land on the Nemaha half-breed Reserve. This last spring she came to the Omaha Reserve with her husband, a white

man, and their children, to claim relationship with the Omaha Indians and to secure, if possible, allotments of lands.

According to the letter of instructions received from the Department, under date of June 1st, enclosing a letter from Secretary of the Interior, directing me to allot the land as 'the law directs,' and that law being Art. 4, of the treaty of 1865, of which the bill approved Aug. 7, 1882, is supplementary, and Art. 4, distinctly stating that only the mixed bloods residing at the time with the Omahas shall be entitled to allotments of land, and as neither Antoine Barada or any of his children, including Celestia Kuhn, were at the time living with the Omahas, but residing on lands they had received by virtue of their mixed blood, on the Nemaha half-breed Reserve, I submit the following decision for approval:

That Celestia Kuhn, daughter of Antoine Barada, is not entitled to an allotment of land on the Omaha Reserve.

In this connection, I would call attention to my letter to the Department under date of July 28, stating the case of Euphrasia Peters, sister of Celestia Kuhn, and to your reply 'A. 14153-83, August 9,' containing your decision in that case.

Very respectfully,

A. C. FLETCHER,

Special U. S. Ind. Agent."

The Commissioner of Indian Affairs entered his order, ruling and judgment denying Celestia Kuhn the right to an allotment under date of September 13, 1883, as follows: (Rec. p. 138.)

31239

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, September 13, 1883.

MISS A. C. FLETCHER,

U. S. Special Agent Omaha and Winnebago Agency, Nebr.:

M'DELE: I am in receipt of your report dated September 4, made in compliance with office Instructions of July 30, last, relative to the claim of Celestia Kuhn (nee Barada) to an allotment of land on the Omaha Reservation, under the provisions of the act of Congress approved August 7, 1882. (22 Stats. 341.)

After reciting the facts in the case, you express the opinion that the said Celestia Kuhn is not entitled to an allotment, and you ask that your decision in the case be approved.

It appears that the applicant is one of seven living children of Antoine Barada, an Omaha half-breed; that she was born of a white mother (French) in St. Louis. Mo., and has lived all her life away from the Omahas, until last spring, when she appeared on the reservation, with her husband (a white man) and children, with a view to securing, if possible, allotments of land.

The law under which the allotments to the Omahas are being made relates to the treaty of March 6, 1865 (14 Stats., 667), which should be taken as a guide in determining as to who are entitled to allotments.

The treaty provides that lands in severalty shall be assigned 'to members of the tribe, including their half or mixed blood relatives *now residing with them.*'

I find in the files of this office, a schedule, duly certified by the Chiefs of the Omaha

tribe, showing the names of those who were properly entitled to selections of land in severalty under the treaty aforesaid, and a description of their respective selections. Said schedule was duly certified by the Agent of the tribe under date December 30, 1870, approved by the Superintendent of Indian Affairs, and having been submitted to the Department by this office January 21, 1871, was approved by the Secretary of the Interior, January 26, 1871.

Neither the name of Antoine Barada, (the father) nor that of the applicant Celestia Kuhn, formerly Barada, appears on said schedule and it is proper to conclude therefore, that they were not recognized as members of the tribe, or half or mixed blood relatives residing with them.

If the applicant was not entitled to an allotment then and it is clear that she was not deemed to be, she certainly is not entitled now, having been in no manner identified with the tribe since that time, living apart from them until a very recent period, when it appears she went upon the reservation simply to claim a share of the tribal lands.

It would be absurd to contend that the treaty or the more recent act of Congress under which the allotments are being made, were intended as a general invitation to all persons everywhere, who by hook or crook might be able to prove the existence of a drop or two of Omaha blood in their veins, to come forward and receive an allotment; manifestly, such was not the intention, for it is not at all likely that there would be land enough on the entire reservation to go around in that way. Besides,

the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the reservation, shows that they would never have consented to any such disposition of their lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians.

Your decision in the case is approved, and Mrs. Kuhn and family should be notified to remove from the reservation.

Very respectfully,

H. PRICE,

Commissioner."

The Kuhn family persisted in remaining upon the Reservation, and against which the Omaha tribe of Indians protested, and desired that the mixed bloods who had come from the Nemaha Reservation should be removed from the Omaha Reservation.

This matter was reported by the allotting agent to the Commissioner of Indian Affairs, and thereupon the Interior Department took steps to enforce its judgment theretofore entered against the Peters and Kuhn families, who were the descendants of Antoine Barada and Josephine Vien, as appears by the following official document:

(Rec., p. 139.)

"UNITED STATES INDIAN SERVICE
OMAHA AND WINNEBAGO AGENCY,
September 25, 1883.

HON. H. PRICE,

Commr. of Indian Affairs.

SIR:—I am in receipt of your letter, dated September 13, No. 16623-83, relative to Celestia Kuhn.

The Kuhn family are disposed to test their

rights here. Although they had been told by the agent and myself that they could not select land and enter upon it until word had been received from the Department as to their application for allotments, they have settled upon claims, built a house and propose to remain. They depend upon political influence to push their claim.

According to the treaty, which is the law governing these allotments, the Kuhn family have no right here. The whole matter is set forth in my letter of the 4th inst., and in the answer received from the Department confirming my decision.

In view of the situation, and to forestall and preclude any further trouble and contention, I would respectfully ask the Hon. Commissioner if it would be possible to have his decision contained in letter No. 16623, dated September 13, 1883, confirmed by the Secretary of the Interior, that there may be no possible appeal left these people who are breeding much trouble among the Indians.

The tribe are unanimous against these mixed bloods remaining on the reservation. A council was held today in which the councilmen urged the government to free them at once from these people, who are trying to 'eat up the land.' Very respectfully,

A. C. FLETCHER,

Special U. S. Ind. Agent."

(Rec., p. 140)

"DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, October 5th, 1883.

MISS A. C. FLETCHER,

U. S. Special Agent, Omaha and Winnebago Agency, Nebraska.

M'DLLE:—Referring to your letter of the 25th ultimo regarding the Kuhn family, who declare to you their intention to remain on the reservation and test their rights, in defiance of the authority of this office, I have to say that I have by letter of this date directed Agent Wilkinson to take immediate steps to remove said family beyond the limits of the reservation.

A copy of my letter to Agent Wilkinson is enclosed herewith for your more complete information.

Very respectfully,
H. PRICE, Commr."

(Rec., p. 140.)

"DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, October 5th, 1883.

GEO. W. WILKINSON, ESQ.,

U. S. Indian Agent, Omaha and Winnebago Agency, Nebraska.

SIR:—Miss A. C. Fletcher, U. S. Special Agent, reports to this office under date of September 25, 1883, that a family by the name of Kuhn have taken up lands and built a house on the Omaha Reservation, announcing their intention to remain there in defiance of the recent decision and directions of this office in their case.

It appears that this family removed to the reservation in the spring of the present year,

with a view to securing an allotment of land under the provisions of Section 5 of the Act of August 7, 1882, (22 Stat., 341) by virtue of the relationship they claim to the Omaha Indians.

The facts of the case as reported by Miss Fletcher in letter of September 4th, last, are substantially as follows:

Celestia Kuhn is one of the seven living children of Antoine Barada, an Omaha half-breed; she was born of a white mother (French) in St. Louis, and has never lived with the Omaha tribe. She has a white husband and children, who accompanied her to the reservation on her removal there in the spring. Neither Antoine Barada (her father) nor any of his children were living with the Omahas at the date of the treaty of 1865, (14 Stat., 667) but were living upon lands secured to them by the provisions of a former treaty, Article X treaty July 15, 1830. Stat., Vol. 7, p. 330.

Accordingly Miss Fletcher decided that Celestia Kuhn was not entitled to an allotment and asked for the approval of her decision by this office.

By letter of September 13, 1883, Miss Fletcher was advised that her decision was approved, and at the same time directed to notify Mrs. Kuhn and family to remove from the Reservation.

That the law under which the allotments to the Omahas are being made relates to the treaty of March 6, 1865, there can be no question. That treaty provides that lands in severalty shall be assigned 'to members of the tribe, including their half or mixed blood relatives *now residing with them*.' I believe it is not

contended and it seems perfectly clear that the present claimant was not living with the tribe at the date of said treaty. Manifestly then she was not a beneficiary under said treaty in respect of the allotments therein provided; for only those half or mixed blood relatives *then residing* with them could be so entitled.

The Omahas had already (by a former treaty July 15, 1830), provided for such of their half-breed brethren as were not residing with them at the date of the treaty aforesaid, and it was undoubtedly by reason of such prior beneficial provision that the restriction was made in the treaty of 1865, limiting the allotments to 'the half or mixed blood relatives *then residing with them.*'

This very Barada family had thus been provided for, and I find that 320 acres of land were allotted and patented to Celestine Barada, individually, within the Nemaha half-breed reserve, where it appears she and her father were living when the treaty of 1865 was concluded.

In the record of this office there is a schedule duly certified by the chiefs of the Omaha tribe, showing the names of those who were properly entitled to selections of land under the treaty of 1865, aforesaid.

Neither the name of Antoine Barada (the father) nor that of Celestia, Barada or Kuhn appears thereon, and it is proper to conclude that they were not recognized either as members of the tribe or half or mixed blood relatives residing with them. If Mrs. Kuhn was not entitled to an allotment then, she certainly is not entitled now. The conditions remain the same.

She has in no manner been identified with the tribe since that time; has not been adopted into the tribe, nor lived with them until the very recent period spoken of.

As was remarked to Miss Fletcher, it would be absurd to contend that the treaty of 1865, or the more recent act of congress under which the allotments are being made, were intended as a general invitation to all persons, everywhere, who might be able to prove the existence of a drop or more of Omaha blood in their veins, to repair to the Reservation and select an allotment. Manifestly, such was not the intention; nor will any such construction be admitted in making the allotments.

It is not at all likely, in the first place, that there would be land enough on the entire Reservation to go around in that way, and it is clear, from the recent action of the Indians in forbidding Mrs. Kuhn to remain on the Reservation, that the Indians would never have consented to any such disposition of their lands, and the language of the act shows that it was not the intention of Congress to do anything contrary to the wishes of the Indians.

It appears from Miss Fletcher's report of the 25th of September, to which reference has been made, that the Omahas are unanimously opposed to permitting Mrs. Kuhn and family to remain on the reservation, and that their presence there is breeding trouble. In a council held on the above date they urged that the Government take steps to relieve them of the burden of these people.

In view of the decision made in their case by Miss Fletcher and approved by this office,

31243

and holding that they have no right to remain on the reservation, I have to direct that you take immediate steps to remove them beyond the limits of the reservation, using your police force for that purpose if it shall be found necessary.

Very respectfully,

H. PRICE,

Commissioner."

That pursuant to the above instruction of the Commissioner of Indian Affairs to the Indian Agent, Celestia Kuhn was notified to leave the reservation, as appears in the following notice which was served upon her. (See stipulation, par. 25, Doc. T. 174, (Rec. pp. 68-69).

"OMAHA AND WINNEBAGO AGENCY, NEB., }
October 15th, 1883. }

MRS. CELESTIA KUHN,

Omaha Reservation, Nebraska,

MADAM:—The Honorable Commissioner of Indian Affairs by letter of October 15th, 1883, makes a decision in your case against your right to hold land on the reservation.

The points cited are as follows, viz.:

1st. That neither Antoine Barada, the father, nor his daughter were living with the Omaha tribe of Indians at the time of the treaty of 1865.

2nd. That Antoine Barada and his family were provided for on the Nemaha half-breed tract under treaty of July 15, 1830.

3rd. Neither the name of Celestia Kuhn, nor the father, Antoine Barada, appears in the schedule duly certified by the Chiefs, showing the names of those who were properly entitled to selections of land under treaty of 1865,

and if she was not entitled then, she is not now.

4th. 'She has in no manner been identified with the tribe since that time; has not been adopted into the tribe nor lived with them until the very recent period spoken of.' The Hon. Commissioner of Indian Affairs after citing the above points as the grounds of his adverse decision then issues an order to me as follows:

'I have to direct that you take immediate steps to remove them beyond the limits of the Reservation, using your police force for that purpose if it shall be found necessary.'

You see that the above order is imperative and I have no choice but to obey.

You will therefor please take such steps within a reasonable time, say ten days, as will relieve me of any unpleasant duties in obedience to the above order.

Very respectfully,

GEO. W. WILKINSON,

U. S. Indian Agent.

Fourth Judgment. Margaret Sloan and Her Descendants Are Not Entitled to Allotments as per Department Ruling Under Date of May 9, 1884.

Margaret Sloan is the mother of Artemesia Frost, nee Sloan, John M. Sloan and William E. Sloan. William E. Sloan was the father of Thomas L. Sloan (Rec., p. 63) and Artemesia is the mother of the complainants, Sarah F. McCreary, nee Frost; Philemon H. Frost, Charles Frost and Leonard Frost. Margaret Sloan made application for allotment of lands for herself and family (Rec., p. 65). The allotting agent made a report on this claim under date of April 28, 1884 (Rec., p. 67),

and the Department ruled under date of May 9, 1884 (Rec., p. 68), "that neither Margaret Sloan nor her descendants are legally entitled to allotment of lands on the Omaha Reservation under the act of August 7, 1882."

The report of the allotting agent and the ruling of the Department thereon are as follows (Rec., p. 67):

"UNITED STATES INDIAN SERVICE,
OMAHA AND WINNEBAGO AGENCY,
April 28, 1884.

HON. H. PRICE,

Commr. of Indian Affairs.

SIR: I would respectfully submit the following decision in the case of Mrs. Margaret Sloan for approval.

Margaret Sloan is the daughter of a full-blood Omaha woman and Michael Barada, a white man. She was born at Fort Calhoun, Nebraska, and taken early in life to St. Louis, Mo., to be educated, where she married Thomas, Sloan, a white man, and afterward lived in St. Louis, Mo., and upon her allotment of land given her as a half-breed Omaha in the Nemaha Reservation. During her youth and early married life she made a few visits to her relatives living with the Omaha tribe. In 1857 Thomas Sloan was appointed to take charge of the mill then being built on the Omaha Reservation and removed thither with his wife Margaret and their three children—William, 19 years; John, 11 years, and Artemesia (now Mrs. Frost), 4 years of age. Mr. Sloan remained at the mill in the government employ for two or three years. This period constitutes the only residence of Mrs. Sloan upon the Omaha Reservation up to 1881, when

she returned here with her grandson, Thomas L. Sloan, the only child of her deceased son, William, who entered upon land and has made considerable improvements on his claim.

Mrs. Sloan claims a rights to an allotment under the act of August 7, 1882, as she states that her husband, Thomas Sloan went into the army after he left the mill on the Omaha Reservation, and was in the army in the year 1865; and that as he entered the army from this place, his residence was the Omaha Reservation, and her constructive residence was that of her husband's.

Her claims have been fully investigated in an open council of the tribe, and I have waited two months for further evidence promised by Mrs. Sloan tending to establish her husband's entrance into the army from the reservation, but feel it now to be my duty to no longer delay action in her case.

According to evidence given by the Indians, Thomas Sloan and his family left the Reserve in 1860, and, according to all I can learn, his point of departure into the army can have no bearing on her case. By her own statement and the testimony of other persons, Mrs. Sloan was not living with the Omahas at the time of the treaty of 1865, but upon her land on the Nemaha Reserve, nor do the tribe in any way admit her claim to land here.

Therefore, in view of all the evidence I have been able to gather, I am constrained to decide that neither Mrs. Margaret Sloan nor her descendants are legally entitled to allot-

ments of land upon the Omaha Reservation under the act of August 7, 1882.

I enclose the sworn statement of Thomas Sloan as to his whereabouts in 1865, which is the only written evidence furnished me by Mrs. Sloan.

Very respectfully,
A. C. FLETCHER,
Special U. S. Indian Agent."

(Rec. p. 68.)

"DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
May 9th, 1884.

MISS. A. C. FLETCHER,
U. S. Special Agent, Omaha and Winnebago Agency, Nebraska:

M'DELE: Referring to your letter of April 28, 1884, asking that your decision in the case of Mrs. Margaret Sloan, applicant for an allotment of land on the Omaha Reservation, under the act of August 7, 1882, be approved, I have to say that I concur in the views expressed in your letter, and therefore approve your decision, 'that neither Mrs. Margaret Sloan nor her descendants are legally entitled to allotments of land on the Omaha Reservation under the act of August 7, 1882.

Very respectfully,
H PRICE,
Commissioner."

Fifth Judgment. The Peters Family Adjudged to be Intruders and Trespassers Upon the Reservation.

The complainant, Frank A. Peters, is a brother of complainants, Mary Sailors, Maggie Rockwell, Jacob Peters, Emiel Peters and Josephine Mitchell, the de-

scendants of Fulton Peters, a free born, full blood white man, and his wife, Euphrasia Barada, a one-fourth blood Indian. Rec. p. 338.)

Frank A. Peters was on the Omaha Reservation one week during the year 1883, (rec. p. 339) evidently at the time that his mother, Euphrasia, was denied the right of an allotment, heretofore set out under the heading, Second Judgment, *supra*. Frank A. Peters returned to the Omaha Reservation subsequently, and selected and began to cultivate a part of the Indian lands. The Indians objected to the intrusion of Frank A. Peters and of the other members of the family and their relations, who had also come upon the Reservation, asserting that if Frank A. Peters had a right to remain upon the Reservation, that they would also remain. To this intrusion of Frank A. Peters and other members of the family, the Omaha tribe of Indians presented to the Commissioner a formal protest under date of March 19, 1888, as follows: Rec. pp. 343-6 and rec. pp. 142-3.)

OMAHA, AGENCY, NEB.,
March 19th, 1888.

Hon. Commissioner of Indian Affairs.

SIR:—Our interview with yon in Washington was so short we could not tell you all about intruders on our tribal land. There is a man named Frank Peters, who, although he has Omaha blood in him, is not entitled to land on our Reservation. He belongs to one of the mixed blood families who were provided with land by us on the Nemaha Reservation, and who were excluded by us in our treaty of 1865 from taking land on this Reservation. Our land was alloted and patented to us under the rules of this treaty, we were told. We

31246

knew that this Peters family tried to take land when our Reservation was alloted to us four years ago and that they had a chance to state their case, and the tribe told their side, and that the case was sent on to Washington and was decided according to our treaty, and the Peters family had to go away. They have been threatening to come back, ever since. Last year Frank Peters came back selected land in Township 24, Range 8, and broke forty acres. We told him to stop and go away. He laughed at us and said he would not go until the Government should come and take him off. We have asked to have him sent away, but nothing has been done. This winter other members of his family and their relations have come up and they say that if Frank Peters stays they will break land and stay here, too. We have asked people who know the law what we should do to save our land. We were told to tell you all about the case, and that you will get the Courts to take the intruders off our land. The law under which our land was allotted says that the Government will hold the land safe for us twenty-five years, and that the land patented to the tribe shall be held just as safe as our individual land. If this man Peters or any other person is permitted to settle on trible land, and the Government does not, by its law, take the man away, we cannot feel sure that our own farms will be kept safe, for the promise is the same for our individual and our tribal land. The law says that our children born during the twenty-five years shall have their allotments on the tribal land. These intruders have selected some of the best of our

unallotted land. Some of the tribe did not listen to good advice when our reservation was allotted; they thought they could not live away from the timber, out on the prairie, but they see their mistake now. Their farms are poor and they want to take land for their young children out on the prairie and farm there, but these intruders are keeping us off good land.

We respectfully ask that you take action to remove all intruders from our tribal land. Frank Peters will soon put in his crops and we do not want him allowed to do so. If this man is permitted to stay, there are a hundred who will make the same claim, and we be defrauded of our property.

Respectfully,

The signatures to the above protest found in the certified record cover more than two pages of legal cap, and most of whom are personally known to the writer of this brief as being among the oldest and most influential members of the Omaha tribe of Indians. (Rec. pp. 143-144).

The Commissioner of Indian Affairs under date of November 14, 1888, made his report to the Secretary of the Interior upon the said petition of the Omaha tribe of Indians, for the removal of Frank Peters, and recommended his removal and requested authority to remove the said Peters from the Reservation if the ruling of the Commissioner of Indian Affairs should be approved, and which said report is, as follows: (Rec., pp. 149 to 154).

"DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, November 14, 1888.

To the Honorable, the Secretary of the Interior,

SIR:—I have the honor to submit the following quoted petition from Indians of the Omaha Reservation, in Nebraska, relative to one Frank Peters, with a statement of the action heretofore taken by this office in similar cases." * * * * *

(Then follows a copy of the petition of the Indians under date of March 19, 1888, quoted *supra*). * * * * *

"The allotment of land on the Omaha Reservation was made under provisions of the act of Congress, approved August 7 1882, (22 Stat., 341); and the said act expressly stipulates and provides that the said allotments shall be deemed and held to be in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for whom, for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said Article provided.

The Fourth Article of the Treaty of March 6, 1865, therein referred to (Stat. 14, 668), extended the benefits conferred thereby, in respect to allotments, to such only of their half or mixed relatives as were *residing with them* at the date of the treaty, the language of the said Article being, "including their half or mixed blood relatives now residing with them."

It will be observed that the Indians of the Omaha Reservation in their complaint to this office, charge that Frank Peters is not enti-

tled to land on their Reservation; that they admit that he has Omaha blood in his veins, being of the mixed-blood families who were provided with land by them on the Nemaha Reservation, that the mixed bloods were excluded by the Omahas in their treaty, of 1865, from taking lands on their Reservation; that the Peters family tried four years ago when allotments were being made to the Omahas to obtain allotments; that they, the Peters family, and other mixed bloods, were denied the right to allotments by the Omahas, and they ask for the removal of Frank Peters from their Reservation.

It may be remarked here that as soon as the law became known (I refer to the Act of August 7, 1882, providing for the sale of a portion of the Omaha Reservation and the allotment of lands in severalty to the members of the tribe), a number of mixed bloods from the old Nemaha Reservation came to the Omaha Reservation in the hope of securing allotments under the new law.

Some of them were born among the Omahas, and none of them had been with the tribe for years—some ten and others twenty or thirty years.

The Indians of the reservation manifested the most determined opposition to their being allowed to participate in the distribution of the land, and from time to time individual cases were reported to this office by the special agent charged with the work of allotting the lands, for decision as to the right of the parties to receive allotments.

As showing the position taken by this office

in deciding the cases of these absentee half or mixed bloods, the following is quoted from a letter addressed to the Special Agent on September 13, 1883, in the case of Celestia Kuhn, a sister of Mrs. Peters and a member of the Barada family.

* * * * * *

(Here follows a liberal quotation from the letter of H. Price, Commissioner of Indian Affairs, to Special Agent Fletcher, under date of September 13, 1883, quoted *supra* under heading, Third Judgment.)

"In order that the Department may further understand the views entertained by this office relative to the half or mixed blood members of the Omaha tribe not residing with them at the date of the treaty of March 6, 1865, I refer to the case of Mrs. Euphrasia Peters and the action of this office thereon.

The last mentioned case was reported to this office by Miss Fletcher, under date of July 28, 1883, as a test case."

* * * * * *

(Thence follows a liberal quotation from the report of Special Agent Fletcher to the Commissioner of Indian Affairs, under date of July 28, 1883, quoted *supra* under heading, Second Judgment).

* * * * * *

"In pursuance of Article 4 of the treaty of March 6, 1865, and the unanimous wish of the Indians in open council, Miss Fletcher decided that Mrs. Euphrasia Peters was not entitled to an allotment of land on the Omaha Reservation."

By letter of August 7, 1883, Miss Fletcher

was advised that her decision in the case of Mrs. Euphrasia Peters was approved by this office.

From the foregoing it will be observed that, under the construction placed upon the act of August 7, 1882, by this office, none but members of the tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

The party, Frank Peters, against whom complaint is made, is a mixed blood Omaha. He is not adopted by the tribe on the Omaha Reservation; he was not residing with them when the treaty of March 6, 1865, was made; his name is not borne upon the duly certified roll of 1871, submitted by the Omaha Council disclosing the names of all Indians or mixed bloods entitled to lands on the Omaha Reservation.

It would appear, therefore, that the said Peters is not entitled to allotment of lands on the Omaha Reservation under the treaty of March 6, 1865, and the provisions of the Act of Congress of August 7, 1882, and is upon the reservation without authority.

It will be observed from the foregoing that this office as well as the Omaha tribe, takes the ground that none of the half breeds or mixed blood Omahas, living at the date of the treaty of 1865, who were not residing with the Omahas at that time, nor the decendants of such, are entitled to allotments on the Omaha

reservation by reason of their relationship to the Omahas.

It appears from the records of this office, that there were some seventy half-breed Omahas who received patents for lands on the Great Nemaha reservation, and it is very important that the question of their rights or the rights of their decendents to the land on the present Omaha reservation be determined.

A decision in the present case will settle the whole question. If you concur in the opinion above expressed, I have the honor to request authority to remove the said Peters and all others of a like class from the reservation.

Very respectfully,

JOHN H. OBERLY,
Commissioner."

The report of the Commissioner of Indian Affairs was approved by the Secretary of the Interior under date of December 5, 1888, and the Commissioner of Indian Affairs was authorized to remove Frank A. Peters from the reservation and all other persons who might be thereon under a similar state of facts, and which said order and judgment is as follows: (Rec., p. 155).

DEPARTMENT OF THE INTERIOR,
WASHINGTON, Dec. 5, 1888.

The Commissioner of Indian Affairs:

SIR:—I have considered your report of the 14th instant, upon a petition filed by the Indians of the Omaha Reservation, in Nebraska, relative to one Frank Peters, whom the petitioners claim belongs to one of the mixed blood families who were provided with land by them on the Nemaha reservation, and who were excluded by them in their treaty of 1865.

from taking land on the Omaha reservation and who now have settled contrary to their wishes on their unallotted lands on the Omaha Reservation.

It is stated in your report that the said Frank Peters, though a mixed blood Omaha, is not adopted by the tribe on the Omaha Reservation; that he was not residing with the Omaha's when the treaty of March 6, 1865, (14 Stats., 668) was made, (the 4th Article of which extended the benefits conferred thereby in respect to allotments, to such only of their half or mixed blood relatives as were residing with them at the date of the treaty); that his name is not borne upon the duly certified roll of 1871, submitted by the Omaha Council, which is represented to contain the names of all Indians or mixed bloods entitled to lands on the Omaha Reservation, which was approved by the Department January 26, 1871; that upon the passage of the Act of August 7, 1882, (22 Stats., 341) providing for the sale of a portion of the Omaha Reservation, and the allotments of lands in severalty to the members of the tribe, a number of mixed bloods from the old Nemaha Reservation, and among them the Peters family came to the Omaha Reservation, in the hope of securing allotments under the new law, and that this was denied them, your office holding that under the said Act of August 7, 1882, none but members of the tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants, and such others as may

have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

In view of these statements, and your finding that the said Frank Peters is not entitled to allotment of lands on the Omaha Reservation under the treaty of March 6, 1865, and the provisions of the Acts of Congress of August 7, 1882, and is upon the Reservation without authority and contrary to the wishes of the Omaha Indians, you are hereby authorized to remove him and any other persons who may be thereon under a similar state of facts, from the Omaha Reservation.

Very respectfully,

WM. F. VILAS,

Secretary."

Sixth Judgment. Frank A. Peters denied Enrollment and Ordered from Reservation.

In 1890, under date of August 6th, Frank A Peters made an application to the Department for enrollment as a member of the Omaha tribe of Indians, and which was accompanied by communications from Thomas L. Sexton, R. W. Furnas and Hon. C. H. Van Wyck.

Hon. T. J. Morgan, Commissioner of Indian Affairs, denied the application and communicated his ruling thereon to said Sexton under date of August 27, 1890, as follows (rec. pp. 348-9):

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, August 27, 1890

Rev. Thomas L. Sexton, Seward, Neb.,

SIR:—I have received your letter of August

19, 1890, transmitting with favorable mention one from Mr. F. A. Peters, dated Omaha Agency, Nebraska, the 6th instant, claiming to have rights in the Omaha tribe, and asking to be enrolled as a member thereof and given an allotment of land, &c., and enclosing a copy of a communication bearing on the subject, from Robert W. Furnas, Esq., and Hon. C. H. Van Wyck.

In reply I have to say that the allotment of land on the Omaha Reservation was made under the provisions of the Act of Congress approved August 7, 1882 (22 Stats., 341), which expressly stipulates and provides that such allotments shall be deemed and held to be in lieu of 'the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for whom for the most part certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided."

The fourth article of the treaty referred to (14 Stats., 668), extended the benefits conferred thereby, in respect to allotments, to such only of their half or mixed relatives as were *residing with them* at the date of the treaty, the language of the article being 'including their half or mixed blood relatives now residing with them.'

As soon as the Act of August 7, 1882, providing for the sale of a portion of the Omaha Reservation and the allotment of lands in severalty to the members of the tribe became known a number of mixed bloods from the old

Nemaha Reservation came to the Omaha Reservation in the hope of securing allotments under the new law. The Indians of the Omaha Reservation manifested the most determined opposition to such persons being allowed to participate in the distribution of the land. The instructions given by this office to the Special Agent making allotments on the Omaha Reservation, concerning the class of claimants referred to were to the effect that none but members of the Omaha tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865 whose names are borne upon the duly certified census roll of 1871 of the Omahas, which was approved by the Department—showing the names of those who were entitled to selections of land in severalty under the treaty aforesaid, or the descendants of those so enrolled, and such others as might have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder.

Under the date of March 19, 1888, sixty-five Indians of the Omaha Reservation addressed a communication to this office protesting against giving an allotment to Mr. Peters who was alleged to belong to one of the mixed blood families, provided with land on the Nemaha reservation by the Omaha tribe by the 10th Article of the treaty of July 15, 1830. (7 Stats., 328.)

This office submitted a report on the subject to the Department under date of November 14, 1888, reciting the foregoing facts and conclusions, and stating that Mr. Peters was not adopted by said tribe, was not residing with

them when the treaty of March 6, 1865, was made, that his name is not borne upon said roll of those entitled to lands upon the Omaha Reserve, that he was upon the Reservation without authority, and recomending that authority be granted for his removal therefrom with all others of a like class.

The Secretary of the Interior, under date of December 5, 1888, granted authority as recommended for the removal of Mr. Peters and all others of a similar class from the Reservation, and on the 15th of that month the Agent at the Omaha and Winnebago Agency was instructed to remove Mr. Peters and the others from the Reservation. The Agent reported April 3, that Mr. Peters refused to remove and he was again instructed May 10, 1889, to remove him, but it appears that this has not been done.

This office does not deem it advisable to take steps with a view to obtaining a reversal of the decision of the Department against Mr. Peters.

Very respectfully,

T. J. MORGAN,

Commissioner."

On the same date, August 27, 1890, the Commissioner directed Indian Agent Robert H. Ashley to require Frank A. Peters and others of a like class to remove from the Reservation. (See letter of August 27, 1890, from Commissioner to Ashley, certified record. Rec., p. 347.)

Pursuant to said directions Indian Agent Robert H. Ashley did, on September 13, 1890, serve written notice on Frank A. Peters, Walter Peters, William Barada and Luke Sailors to remove from the Reservation. (See his letter September 15, 1890. Rec., p. 161.)

Seventh Judgment. Complainants Denied Enrollment.

In January, 1891, a duly accredited delegation of Omaha Indians waited on the Commissioner of Indian Affairs at Washington, and urged the removal of these mixed blood intruders. (See letter January 12, 1891, Commissioner to Secretary of Interior. Rec., p. 163.)

Subsequently, under date January 13, 1891, the Commissioner in his instructions to Robert H. Ashley, Indian Agent, relating to payment of annuities, ordered that said complainants should not be enrolled and should not receive annuities and said: (Rec., pp. 164-5).

> "As you have had a good many per capita payments to Indians to make, I do not think it necessary to instruct you in detail in regard to the general rules to be followed, and the customs and usages which experience has shown to be most advisable, but will enclose with this a copy of a letter, addressed to me, under date of 12th instant, to certain Omaha delegates, who are now in this city, by which you will observe that certain parties therein named who belong to a class of trespassers on the Omaha Reservation, and who are not entitled to lands, or other benefits, under the Act of August 7, 1882, above referred to, are not to be enrolled by you, or allowed any share in the payment you are about to make."

The names of those specially objected to by the delegates are: William Barada, Thomas Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters and Mrs. Sailor and their

families, and you will not enroll or pay any of them.

* * * * * *

Respectfully,
T. J. MORGAN,
Commissioner."

Eighth Judgment. Complainants' Former Suit in this Court.

The facts relating to the former adjudication in this court are set out in stipulation of facts in Doc. T., No. 174, par. 28, and T. No. 267, par. 37. (Rec., pp. 70-71 and pp. 353-4).

"That Margaret Sloan, Thomas L. Sloan, William Barada, Frank Peters and Walter Peters, becoming advised that they should not be enrolled nor receive annuities, and becoming advised that it was the purpose and intention of the Department to have them forcibly removed from the Reservation as intruders and trespassers thereon, filed a bill in equity in the Circuit Court of the United States, for the District of Nebraska, wherein Robert H. Ashley, U. S. Indian Agent, Henry Fontenelle, Wa-gae-pa, otherwise known as Ezra Fremont, Wa-han-ga, John Springer, Nebraska, and twelve hundred others, being members of the Omaha tribe of Indians, were made defendants, and in which suit said complainants claim to be members of the Omaha tribe of Indians, and to be entitled to allotments of land, and to receive annuities, and upon the filing of said bill on the 30th of January, 1891, obtained a writ of injunction enjoining Robert H. Ashley, U. S. Indian Agent, from forcibly removing the complainants therein from the

Omaha Reservation; that in said case the defendants in said suit filed answer, and proofs were taken, and subsequently, on the 25th day of April, 1893, a decree of dismissal was entered in said cause as follows:

Bill dismissed Plffs. for cost.

"It is held that the President is authorized to make such disposition of money and property as he may think advisable for the benefits of the Omaha Indians, and that his authority to do so cannot be restricted by injunction; and on that ground, and for these reasons, the bill is dismissed.

(Signed)
ELMER S. DUNDY,
Judge.

(Journal "R," page 425.)

In which said judgment and decree was not appealed from, but remained in full force and effect."

Ninth Judgment. Adoption of Sloans into Indian Tribe Denied.

All other remedies having failed, and the Interior Department having frequently ruled that the Sloans and others were not entitled to receive annuities or to have allotment of lands on the Omaha Reservation, Margaret Sloan and Thomas L. Sloan endeavored to have themselves adopted into the Omaha tribe of Indians, and to that end procured petitions to be signed by a considerable number of the members of the Omaha tribe of Indians, requesting that their names should be placed upon the rolls as members of the tribe.

To these petitions a vigorous protest was made by certain members of the tribe, who asserted, among

other things, that Thomas L. Sloan was seeking to secure by adoption into the tribe, what he had failed to secure before the Department and in the courts, and that no reason could be given for his adoption into the tribe that could not be given with equal force for the adoption of any other white man. (See pp. 18, 19, *supra.*)

The Commissioner of Indian Affairs reported the application for adoption to the Secretary of the Interior, and the Secretary of the Interior found and ruled that the Sloans were not entitled to adoption into the tribe, and in his opinion under date of September 6, 1894, said:

(Rec. pp. 156-8).

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, September 6, 1894.

Commissioner of Indian Affairs:

SIR:—I have received your letter of the 10th of July last, transmitting one from Captain Wm. H. Beck, U. S. A., Acting Indian Agent at the Omaha and Winnebago Agency, Neb., with enclosures of six petitions by Omaha Indians asking that the names of Mrs. Margaret Sloan and Thomas L. Sloan be placed upon the rolls as members of that tribe—these petitions bearing the names of some one hundred and sixty persons, including those of nine of the eleven members of the tribal council. The acting agent states that these petitions were made after due deliberation in several open councils, in which the claims of the Sloans were presented, discussed, and decided upon, with the result that the council and many other members of the tribe desire the adoption of the persons named, and that the sig-

ners took such action, believing that Thomas L. Sloan would be of benefit to them in the near future, as he would identify himself with the tribe, and from his ability and character, and knowledge of the tribe, be able to aid them in handling their lands. He further adds that the Omahas are divided into factions, and refers to one led by Henry Fontenelle and Silas Wood, ex-interpreter, who obtained a petition many months ago secretly and forwarded it to the Department, representing that the Omahas did not desire Mr. Sloan to become a member of the tribe, which petition, the Agent says, was signed largely without the authority of the signers.

This latter petition contained about ninety-five names, and anticipated the action of the members of the council and other Indians of the tribe in the matter of adopting the Sloans as members, and embraced a statement or argument against the adoption of the said parties into the tribe; among other things, that about three years ago Thomas L. Sloan, having met with no success before the Department with his claim, resorted to the U. S. Courts, and the tribe was asked to show cause why Sloan and many other part-blood Omahas should not share in the annuities and lands of that tribe; that the oldest and best informed Indians of the tribe gave their testimony in that case, which cost the tribe nearly $3,000, with the result that the U. S. Court, like the Department, decided the case against Sloan and his co-petitioners, and that he is now seeking to gain by adoption into the tribe what he failed to secure before the Department and the

U. S. Court; further, that it is not the wish of the tribe to have Sloan become a member of it, and adds that without stopping to say how many reasons there are why Mr. Sloan should not be admitted, they do say there is no reason for his adoption that could not be given for the adoption of any other white man.

You say that the claims of Mrs. Sloan and Thomas L. Sloan, her grandson, to recognition as Omaha Indians, and their right to participate in the use and enjoyment of the tribal properties, have been frequently before your office during the past eleven years, either independently or in connection with the claims of other Omaha half-breed claimants whose status is similar to that of the Sloans, and refer to a report of Miss Alice C. Fletcher of April 28, 1884, who was then making allotments to the Omahas, in which she stated that Mrs. Sloan (who was the daughter of an Omaha woman and Michael Barada, a white man, and who holds an allotment on the Nemaha Reserve as an Omaha half breed) never lived upon the Omaha Reservation until in 1857, when her husband, Thomas Sloan, a white man, was appointed to take charge of the mill then being built on that reservation, where he remained in government employ for two or three years, which period constitutes her only residence there up to 1881, when she returned thereto with her grandson, Thomas L., the only child of her deceased son, William; that Mrs. Sloan and her grandson claimed the right to allotments on the Omaha Reserve under the act of August 7, 1882, although section 5 of that act provided that such allotments shall be

in lieu of those provided for in the fourth Article of the treaty of March 6, 1865, with the Omahas, which said article provided for allotments in severalty to the Omaha Indians, 'including their half or mixed blood relations now (then) residing with them;' that the schedule of selections of land in severalty under the said fourth article, duly certified by the chiefs of the Omaha tribe, and certified and submitted by their agent to your office on December 30, 1870, which was approved by the Department on January 26, 1871, embrace neither the name of Mrs. Sloan nor of her descendants; that her claims were fully investigated in an open council of the tribe, and that the tribe does not in any way admit Mrs. Sloan's claim to land, and you say that Miss Fletcher accordingly decided that Mrs. Sloan and her descendants are not legally entitled to allotments under the said act of August 7, 1882, and that her decision was sustained by your office on May 9, 1884.

After reciting other facts in relation to the claims of the persons herein referred to, and the general status of the Omaha half-breed question at this time, and the opinions and decisions of your office and the Department in these cases, which opinions and decisions have been uniformly adverse to the mixed-bloods, you state that your office knows of no reason either for changing such decision or for making an exception of the case now before it, and submit the question of the adoption of Mrs. Margaret Sloan and Thomas L. Sloan as members of the Omaha tribe of Indians, with all the rights and privileges appertaining thereto,

for the consideration and decision of the Department.

The status of these claimants seems to be that they have failed to establish any rights to recognition as members of the Omaha tribe and that they now seek to establish such rights through the petitions presented with your letter, which contain the names of certain members of that tribe, who apparently assent to their adoption, with all the rights and privileges as such members.

Aside from the general proposition that the question of adopting the Sloans as members of the tribe is one in a measure separate and distinct from their alleged rights as Omaha Indians by blood, and that such alleged right is not necessarily a test for such adoption, there remains the right to admission by the free will and consent of the tribe, if fairly and properly obtained.

Upon their faces, the several petitions presented with your letter seem to be in proper form and to express the desire of a majority of the members of the tribe that the persons in question shall be placed upon the rolls of the tribe, and be admitted to all the rights and privileges of the other members thereof.

Besides the opposing petition heretofore referred to, the Department is in receipt of recent information which shows that of the one hundred and fifty-seven persons whose names appear on the six petitions presented with your letter, only seventy now favor the claimants; that eleven others has since assented to their adoption, making eighty-one in all now favorable; that twenty-four of the signatures thereon

were not written by the parties whose names are given, nor was the use of their names authorized by them; that fifteen names were signed twice, and that the said petitions bear the names of nine boys and three women neither of whom have any voice in such matters; that one of the nine members of the council purporting to have signed one of the petitions, did not sign nor authorize the use of his name, and, further, that there are one hundred and eighteen male members of the tribe, of lawful age, who oppose the adoption of the Sloans.

Without expressing any opinion of the merits of the petitions in question, the facts presented seem to clearly establish the belief that it is the desire and wish of a majority of the members of the tribe that the Sloans be not admitted to membership and it is so ordered.

In reference to that part of your report wherein you state that Thomas L. Sloan has held and improved a tract of land since 1881 or 1882, on the Omaha Reservation, it would seem that he is doing so in defiance of any legal authority of occupation.

The enclosures of your letter are returned herewith.

Very respectfully,

WM. H. SIMS,

Acting Secretary.

Subsequently the Sloans applied to the Commissioner for a re-hearing, appealed to the Secretary of the Interior, who denied the re-hearing and affirmed the former ruling, as is set out in the following opinion and judgment. (Rec., pp. 165-8).

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, November 17, 1896.

Commissioner of Indian Affairs:

SIR: I am in receipt of your letter of the 10th instant, with its enclosures, reporting upon the cases of Mrs. Margaret Sloan and Thomas L. Sloan, applicants for admission to membership with the Omaha tribe of Indians, presented by their attorney, Mr. Ralph W. Breckenridge, of Omaha, Nebraska, who appeals by letter dated October 1st, last, from the conclusions reached by your office on September 28th, last, in declining to reconsider the cases of the persons named.

This case was before the Department, with your letter of July 10, 1894. After due consideration of all the facts then presented, the Department decided adversely to the claimants, for the reasons set out in its letter to your office, dated September 6, 1894.

No evidence of fact or law is now presented that was not then known to and considered by the Department.

The only facts now offered that can be considered in the light of new evidence, is the 'decision of the Spencer case,' tried May 16, 1896, in the United States Court for Nebraska, on behalf of the Government, to recover an amount improperly disbursed.

Mr. John T. Spencer was appointed by the Department in 1890 to make a payment of certain moneys to the Omahas.

When his accounts were received and examined by your office, it was found that he had enrolled and paid annuities to Margaret

and Thomas L. Sloan (the present claimants) as members of the Omaha tribe.

Having no authority to enroll or pay annuities to these persons, and making no satisfactory explanation of the reasons for his action, exceptions to his accounts were noted, and suit brought against his bond for the recovery of the amounts so paid, with the result that the jury found in favor of the defendant.

The testimony in the case, which is quite lengthy, clearly discloses the probability that the attorney who represented the Government was not in possession of the decision of the Department against the Sloans and other mixed-bloods of a like class, or the reasons therefore, nor that he was aware of their true status. It also discloses that important evidence was withheld from the jury that in all probability would, had it been properly placed before the court, have resulted in a different charge to the jury and a different verdict by that body.

Instead, it appears that the jury were led to believe that the objections of the Department to admitting these people to share with the Omahas must be found either in a misapprehension of their lineage, 'or else in the caprice of some subordinate of the Department.' (*Vide* brief of Mr. Breckenridge, p. 10.)

The question of the tribal rights of these persons was not before the Court. The issue was whether they were properly enrolled by Mr. Spencer.

The last instruction of the Court to the jury was, as follows:

'To charge Spencer with payments that

were made to parties who were not members of the tribe; it must appear they were not members of the tribe and not entitled to share, and he had no good and reasonable ground to believe they were not members of the tribe at the time he made the payments to them.'

No evidence was offered by the prosecution to show that these persons were not legal members of the tribe, although it was within the knowlede of at least one of the Government's witnesses, who had been officially informed of the status of the case, and *why* the Department refused to authorize the enrollment of the Sloans with the Omahas, and nowhere in the record of the testimony before the Court in the case are the reasons shown *why*, and upon what legal grounds the Department declined allotments to the claimants.

Hence the favorable verdict of the jury for the defendant.

Mrs. Margaret Sloan received an allotment of three hundred and twenty acres of land, as a half-breed Omaha Indian, under the provisions of article ten of the treaty of July 15, 1830, with the Omahas and other tribes, (7 Statutes, 328-330)—provision being made therein that the parties to the treaty 'might be permitted to make some provision for their half-breeds, and particularly that they might bestow upon them the tract of country within the following limits,' etc.

This tract of country was known as the Nemaha (half-breed) reserve.

Patent No. 128 for her allotment therein was issued to Margaret Sloan September 10, 1860, under the provisions of Section 5 (4) of an

Act of Congress approved July 31, 1854, (10 Statutes, 332) which directed that the stipulations of the tenth article of the treaty of 1830 be fulfilled by causing the reserved tracts to be surveyed and allotted to the persons entitled thereto.

About the same time her son, William E., the father of Thomas L., one of the claimants, who is the grandson of Margaret, received an allotment (No. 274) of three hundred and twenty acres on the Nemaha reserve, for which a patent was subsequently issued to him.

Thomas L. was born in St. Louis in 1863, and lived on the Nemaha reserve with his grandmother for some time in the 70's until 1880, when they went to the present Omaha reservation.

It is not denied, nor has it ever been that the Sloans, mother and son, are of part Omaha Indian blood. The tribe recognized them as such and made provision for them, with others, by the treaty of 1830, and in the opinion of the Department, and the Omahas themselves, their claims as such mixed-bloods were extinguished by the lands given them under the terms of the tenth article of the treaty named.

As showing that the Omahas so regarded this provision, they provided in their treaty on March 6, 1865 (14 Stat., 667, Article 4), that allotments of land in their reservation in Nebraska should be given to their 'half or mixed-blood relatives *now residing* with them,' and when many of the mixed-bloods from the Nemaha reserve went to the Omaha reservation to secure more land, after the passage of the act August 7, 1882, (22 Statutes, 341), which provided for the sale of a part of the latter re-

servation and allotment of land in severalty, the Omahas strenuously objected and called upon the Department to remove these half-breeds from their reservation. They so objected to the Sloans.

The claims of Margaret and her son William E. were extinguished prior to the birth of Thomas L.

It is nowhere alleged or claimed that the latter is the offspring of a mother having Indian blood, much more of one of Omaha blood. The presumption is, therefore, that his mother was a white woman.

The claims of Margaret and Thomas L. are based upon their birthright as Omaha Indians and upon their alleged adoption in recent years by the tribe.

The birthright claim of Margaret has been extinguished. Thomas L. never had such claim. Neither of them have any claim by adoption, never having been regularly, fairly, or properly adopted by the tribe, as was shown by Department letter of September 6, 1894.

Notwithstanding that Mr. Breckenridge has advised the Department by letter, dated the 30th ultimo., of his withdrawal as attorney for the claimants, I have caused this review of the case to be made, and adhere to the opinion expressed in Department letter of September 6, 1894, that the persons named have no valid legal claims to membership with the Omaha tribe of Indians.

The papers transmitted with your letter are returned herewith.

Very respectfully,

D. R. FRANCIS,

Secretary."

It will be noted the foregoing proceedings were had by the Sloans after the act of 1894 conferring jurisdiction upon the United States Circuit Courts in such cases.

Tenth Judgment. Artemesia Frost Denied Membership into the Tribe.

Artemesia Frost, who was a daughter of Margaret Sloan and sister to William E. Sloan (the father of Thomas L. Sloan), and who is the mother of the complaints, Philemon H. Frost, Sarah F. McCreary, Charles Frost, and Leonard Frost, (rec. p. 65) made an application to the Interior Department by petition and in person, to be admitted into membership with the Omaha tribe of Indians. The said application was considered by the Commissioner of Indian Affairs and the facts by him reported to the Secretary of the Interior, under date of June 16, 1897, and afterwards on the 21st day of June, 1897, the Secretary of the Interior adjudged and determined that Artemesia Frost was not entitled to be admitted into membership with the Omaha tribe of Indians, and which said judgment and ruling is as follows: (Rec. pp. 168-9.)

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, June 21, 1897.

The Commissioner of Indian Affairs.

SIR:—I am in receipt of your letter of 16th instant, transmitting for Departmental consideration certain papers in the case of Artemesia Frost, a quarter blood Omaha woman, who applies by petition and in person (being present in the city) for membership in the tribe named, with all the benefits, rights, and privileges pertaining thereto.

Among the papers submitted are letters

from Senators Allen and Thurston of Nebraska, the former of whom asks that a patient hearing be given Mrs. Frost's case, and the latter that her case be reconsidered and sent for further investigation to Lieut. W. A. Mercer, U. S. A., the newly detailed agent at the Omaha and Winnebago Agency, Nebraska, on the ground that great favoritism has been shown by the late agent, Captain William H. Beck.

Mrs. Frost is the daughter of Margaret Sloan, a mixed blood Omaha woman whose case was decided adversely by the Department on November 17, 1896, on the ground that her "birthright' claim had been extinguished under the provisions of Article X (10) of the treaty of July 15, 1830, with the Omaha and other tribes (7 Statutes, 328-330.)

Mrs. Frost's claim is an exact counterpart of that of her mother, who also claimed recognition as a member of the tribe, with the right to participate in the tribal annunities, etc., and to receive an allotment of land.

An examination of Mrs. Sloan's case shows that she received an allotment of three hundred and twenty acres of land, as a half-breed Omaha, under the provisions of the treaty of 1830, in the track of country known as the 'Nemaha Reserve,' especially set apart by the said treaty for the purpose of bestowing upon their half-breed relations some provision for their support.

There is nothing in the papers in Mrs. Frost's case to show that she was an allotte in the Nemaha reserve, although it is stated in your letter that she orally admitted having re-

ceived lands in that reserve. She has also stated to the Department, in the course of an interview in regard to her case, that she received an allotment in the said reserve as an Omaha half-breed. Her rights therefore, seem to have been recognized and she seems also to have been compensated in the manner provided by the treaty in cases of that character.

As showing that the Omahas regarded that the claims of such mixed bloods were extinguished by the lands given them under the provisions of the treaty cited, the following provision was made in Article Four (4) of the treaty with them of March 6, 1865, (14 Statutes, 667-668.)

The Omaha Indians being desirous of promoting settled habits of industry and enterprise among themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, *including their half or mixed-blood relatives now residing with them.* * * *

When many of the mixed-bloods from the Nemaha Reserve went to the new reservation to acquire more land, after the passage of the Act of August 7, 1882 (22 Statutes, 341), which provided for the sale of a portion of the latter reservation and allotment of land in severalty, the Omahas strenuously objected and called upon the Department to remove these half-breeds from their reservation.

By her own admission, Mrs. Frost's birthright claim has been extinguished. To admit her present claim would be an injustice to those of the tribe who have never received al-

lotments and who alone are entitled to participate in the division of the lands in the diminished reserve; would also be against public policy and a violation of the rules and regulations of the Department, which prohibit more than one allotment to an Indian, for any reason whatever.

The papers in the case are herewith returned.

Very respectfully,

C. N. BLISS,
Secretary."

VI

The Act of 1894, as Amended in 1901, Does Not Confer Upon the Circuit Court Jurisdiction to Review or Vacate the Judgments Rendered by the Interior Department Against the Mixed Blood Complainants Set Out in the Preceding Chapter of this Brief. The Jurisdiction of said Court is Confined to An Inquiry as to Whether the Complainants Are Entitled to an Allotment of a Particular Parcel of Land Which they May Lay Claim to, as Against the Claim of Any Other Person to an allotment of the Same Particular Land.

The present suits are brought on the theory that the court has jurisdiction to overturn the rulings and judgments of the Interior Department before recited in this brief, and to determine and adjudge the complainants to be members of the Omaha tribe of Indians, and, as such members, entitled to receive annuities and allotments of lands under the act of 1882.

The Interior Department has adjudged and determined the following facts and conclusions:

a. The complainants were not members of the

Omaha tribe of Indians in 1865, and were not entitled to annuities or to allotment of lands under Article 4 of the treaty of 1865.

b. The complainants were not mixed blood relatives residing with the Omaha tribe of Indians in 1865.

c. The complainants were not persons who had received assignments or certificates of assignments of lands under the treaty of 1865, and not persons who were entitled to have or receive such certificates under the treaty of 1865, as referred to and described in section 5 of the act of 1882.

d. That the complainants were not members of the Omaha tribe of Indians when the act of 1882 became a law, and were not persons who were authorized to participate in the open council of the Omaha tribe of Indians in 1882.

e. That the complainants were not even residing upon the reservation in 1882, but that they subsequently came to the reservation with the purpose and intent to wrongfully obtain an allotment of land to which they were not entitled.

f. That the Omaha tribe of Indians constantly and persistently protested against the complainants receiving an allotment of lands and against their claim to membership in the tribe.

g. The Department has frequently and continuously ruled during the last twenty years that the complainants were not members of the Omaha tribe of Indians, and that their presence on the reservation was that of intruders and trespassers.

h. That some of the complainants eventually endeavored to have themselves adopted into the tribe,

but which adoption was denied by a majority of the tribe and refused by the Interior Department.

Our point of contention is that no one of the preceding questions is subject to review by the court.

The above questions were adjudicated by the Interior Department prior to the act of 1901 and prior to the beginning of these suits. It certainly was not the intention of the law that the court shall assume the function which belonged to the Interior Department, and to overturn its judgments and findings. Neither was it the intention of the law that the court should sit as a court of review over the judgments and rulings of the Interior Department. The Department of the Interior had plenary power given it under the act of Congress to pass judgment upon all the questions above set down, and has full and complete jurisdiction over Indian Affairs. That was so when the law of 1901 was passed, and had been so from the beginning of the Government.

If Congress had intended by the act of 1901 to take from the Departmeat of the Interior the above mentioned powers, and to confer them upon the courts by the act of 1901, it would have said so in explicit terms. We all know that the powers of the Interior Department are as full, complete and comprehensive over Indian affairs since the act of 1901, as they were prior to that date. We all know that the Interior Department is daily engaged in the exercise of those powers.

Would any one contend that the Sloans could apply to the Interior Department for admission to membership with the Omaha tribe of Indians, and after hearing the Interior Department should deny their right to membership, that they would have a right to

bring an action in the courts to establish their membership?

Suppose the rights of the complainants to allotments was dependent upon the question whether they were residents upon the reservation or members of the Omaha tribe of Indians when the law of 1882 was passed, and the complainants had submitted that question to the Interior Department, would any one contend that they could file a bill in the courts to have the same again re-adjudicated? So I might go on with like queries relating to every question of law, and fact which has been adjudged by the Interior Department against these claimants. To hold otherwise would be to give the act of 1901 a retroactive effect in violation of the well settled rule of law.

In *Atoka Coal & Mining Co. v. Adams*, 104, Fed., 471, Judge Caldwell, speaking for the Circuit Court of Appeals, said:

> "The function of the Legislature is to prescribe rules to operate upon the actions and rights of citizens in the future. While in the absence of a constitutional inhibition, the Legislature may give to some of its acts a retrospective operation, *the intention to do so must be clearly expressed, or necessarily implied from what is expressed.*"

Judge Cooley in *Constitutional Limitations*, says, p. 456:

> "It is a sound rule of construction that a statute should have a *prospective operation only*, unless its terms show clearly a legislative intention that it should operate retrospectively."

If the Circuit court can review or overturn the judgments of the Interior Department which have been

heretofore rendered, it might lead to disastrous consequences as it might overturn the established practice and precedents of the Department, and unsettle principles and precedents which had long been established.

It is settled law that the Secretary of the Interior cannot reverse the judgments rendered by his predecessor, and that the judgments of an incumbent of that office are final and conclusive upon his successor. *Noble v. Union River Railway Company*, 147 U. S., 176; *Emblam v. Lincoln Land Company*, 94 Fed., 714; *United States v. Stone*, 2 Wall., 525, 535. For the same reasons the judgments of the Interior Department should be final and conclusive upon the courts to the like extent.

The converse of the proposition must equally be true, to-wit: That when the Circuit Court shall enter its judgment in a matter over which it has jurisdiction, the Interior Department would be without authority to review or reverse the judgment of said court. The act provides that the judgment of said court when properly certified by the Secretary of the Interior shall have the same effect as if such allotment had been allowed and approved by him. In other words, the judgment of this court would have the full force and effect of a like judgment entered by the Secretary of the Interior to an allotment of a particular piece of land, but it has no greater force or effect. Yet, we do not think any one would contend that the Secretary of the Interior could reverse or review or vacate the findings and decrees that might be rendered by this court in the pending cases. Likewise the Circuit Court does not have authority or jurisdiction to reverse the judgments heretofore rendered by the Secretary of the Interior.

The Jurisdiction of the Circuit Court is Limited to an Inquiry into the Complainant's Right to an Allotment to a Particular Parcel of Land.

And it has no jurisdiction as to tribal rights or tribal questions or to any question relating to Indian affairs over which jurisdiction is conferred on the Interior Department.

The act reads:

> "That all persons who are in whole or in part of Indian blood * * * who claim to have been unlawfully denied or excluded from *any* allotment or any parcel of land to which they claim to be lawfully entitled by virtue of an act of Congress, may commence and prosecute or defend any action, suit or proceeding in relation to *their right thereto* in the proper Circuit Court of the United States; and said Circuit Courts are hereby given jurisdiction to try and determine any action * * involving the right of any person * * to any allotment of land under any law or treaty * * and the judgment or decree * * shall have the same effect when properly certified to the Secretary of the Interior as if *such allotment* had been allowed and approved by him."

It will be observed that the language of the act contemplates a proceeding in the Circuit Court *only* when the plaintiff makes claim to a particular allotment or parcel of land. In other words, the jurisdiction conferred upon the Circuit Court is to decide whether the complainant is entitled to a particular parcel of land by way of allotment. This is made more clear by the latter part of the clause which provides that the decree shall have the same effect as if such allotment

had been allowed and approved by the Secretary of the Interior.

It has long been a settled rule of law that a claimant to the public lands could not maintain a suit in the courts to recover the same so long as the title remains in the United States. But the courts have exercised jurisdiction between the claimant to a particular piece of land and the person to whom the lands were in fact patented by the United States in proper cases, to-wit: Where it is clear that the officers have "by a mistake of law given to one man the land which on the undisputed facts belong to another." *Moore v. Robbin*, 96 U. S., 530.

On this point Judge Shiras said (*Sloan v. United States*, 95 Fed., 193, 194, 195):

> "In the exercise of the jurisdiction to give relief within the limits thus defined, courts will not take cognizance of a controversy over the title to particular premises, so long as the title thereto remains in the United States, but will only do so after the title has vested in a private party. *Gaines v. Thompson*, 7 Wall., 347; *Secretary v. McGranahan*, 9 Wall., 298; *Litchfield v. Richards*, Id., 575; *Marquez v. Frisbie*, 101 U. S., 473."

> It was doubtless the existence of this recognized and well-established rule, with respect to the public lands generally, that led to the adoption by Congress of the act of August 15, 1894, (28 Stat., 305). A refusal on the part of the land department to make an allotment of a particular tract or of a specified number of acres out of the reservation to a claimant would leave the title in the United States, and under the general rule, as laid down in the

cases above cited, courts would refuse to exercise jurisdiction on behalf of the party claiming an allotment, so long as the title remained in the government. To remedy this difficulty, the act of August 15, 1894 (28 Stat., 305), was adopted, which creates a special jurisdiction in the courts, evidently intended to enable the courts to deal with the legal questions involved, and to settle the rights of parties seeking allotments in severalty, although the title to the lands remains in the United States. Under the recognized rule applicable to the public lands of the United States, the courts would not take jurisdiction over contested rights thereto until, by action of the land department, the title had been vested in a private party; but under the act of August 15, 1894 (28 Stat., 305), the jurisdiction, in cases coming within the purview of the act, may be exercised while the title remains in the United States."

What was said by Judge Shiras in the above quotation apparently limits the jurisdiction of the court within the line of inquiry we are insisting upon. Applying the above rule of construction to the present suits, the questions to be considered are reduced to these: If the claimants assert rights to particular parcels of land which have been allotted and patented to other persons, the court would have jurisdiction to adjudicate upon the respective claims thereto, in like manner and under like circumstances that would warrant the exercise of like jurisdiction under the land laws of the United States. It may be that the effect of the act of 1901 is to confer the right upon the courts in Indian allotment cases *before* the title passes from United States. Be this so, nevertheless, the jurisdic-

tion of the courts is limited to an inquiry as to the right of a complainant to a particular parcel of land. But it is apparent that the line of inquiry above indicated is entirely distinct from and different from the inquiries and matters and things which were adjudged and determined by the Interior Department against those complainants. Wherefore, the matters and things which were adjudged and determined by the Interior Department are not subject to review or reinvestigation by this tribunal in these proceedings.

But it is equally true that the questions of law *and fact which have been adjudged and determined preclude the rights of the complainants to any allotment of land whatsoever.*

The court in the present case cannot decide that the complainants are entitled to have allotted to them particular lands, which they lay claim to in the pleadings, without reversing judgments of the Interior Department on the many questions heretofore determined by it.

The judgments of the Interior Department heretofore referred to necessarily involved *a finding of matters of fact*, and also of mixed questions of law and fact, and are conclusive and unassailable in a proceeding of this character. *Smelting Co. v. Kempt*, 104 U. S., 636 640; *Marquez vs. Frisbie*, 101 U. S., 473; *Noble vs. Union River Logging Ry. Co.*, 147 U. S., 175; *United States v. Winona, etc., R. R. Co.*, 32 U. S. App., 272.

VII

The Act of August 7, 1882, Only Contemplated Allotments of Lands to Members of the Omaha Tribe of Indians Then Residing on the Reservation, and Their Descendants.

From pages 25 to 30 of this brief *supra*, I stated in outline several reasons based upon the language used in different sections of the Act of August 7, 1882, which seem to me to lead irresistibly to the conclusion that the said act was in the nature of a compact between the United States and the "Omaha tribe of Indians" in their tribal capacity; and that the enforcement and fulfillment of the said act was dependent upon the acceptance of said act by the "Omaha tribe of Indians," expressed in open council; wherefore, it necessarily followed that no person could be a beneficiary under said act unless he or she was *then* a member of the "Omaha tribe of Indians," and *then and there* entitled to take part in the councils of said tribe. (In support of the above we refer back to our argument on this point, pp. 25-30.) The rulings of the Department of the Interior have at all times been upon the line of thought above suggested, in the heading of this paragraph.

Commissioner Price, in his ruling in the Kuhn case, under date of September 13, 1883, has said (rec. p. 139):

> "It would be absurd to contend that the treaty or the more recent Act of Congress, under which the allotments are being made, were intended as a general invitation to all persons everywhere, who by hook or crook might be

able to prove the existence of a drop or two of Omaha blood in their veins, to come forward and receive an allotment. Manifestly, such was not the intention.

Commissioner Price, in his instructions to Wilkinson, Indian Agent, under date of October 5, 1883, said: (Rec., p. 141).

> "It would be absurd to contend that the treaty of 1865, or the more recent act of Congress, under which the allotments are being made, were intended as a general invitation to all persons everywhere who might be able to prove the existence of a drop or more of Indian blood in their veins, to repair to the Reservation and select an allotment. Manifestly, such was not the intention, nor will any such construction be admitted in making the allotments."

What was said by Commissioner Price is supported by another consideration, to-wit: the fact that while the allotments were being made in 1883-4 the "Omaha tribe of Indians" vigorously protested against allotments to the non-resident mixed bloods, and from which fact Commissioner Price stated that it was evident that the tribe would not have consented to the act of 1882 if its scope and purpose had been to permit the non-resident mixed bloods to have a share of their lands. The rule of law is that the Indian treaties and compacts are to be construed in favor of the tribe, Upon this point the Commissioner said, September 13, 1883:

> "Besides the recent action of the Indians in forbidding Mrs. Kuhn and others to remain on the Reservation, shows that they never would have consented to any such disposition of their

lands, and it is plain from the language of the act that it was not the purpose of Congress to do anything contrary to the wishes of the Indians."

The construction of the act of 1882 as set down by Commissioner Price in his ruling in the Kuhn case and in the Peters case, was adhered to and followed by his successors. On November 14, 1888, Commissioner John H. Oberly, in a report to the Secretary of the Interior, quoted the rulings of Commissioner Price with approval, and added that the Indian office as well as the Omaha tribe take the ground "that none of the half-breeds or mixed blood Omahas, living at the date of the treaty of 1865, who were not residing with the Omahas at that time, nor the descendants of such, are entitled to allotments on the Omaha Reservation by reason of their relationship to the Omahas." (Rec., p. 154.)

Hon. Wm. F. Vilas, Secretary of the Interior, under date of December 5, 1888, approved the report of Commissioner Oberly and authorized the Commissioner to remove Frank Peters and all other persons from the Reservation who were thereon under a similar state of facts. In the summary of facts stated by the Secretary, is this paragraph: (Rec., p. 155.)

"That upon the passage of the act of August 7, 1882, providing for the sale of a portion of the Omaha Reservation, and the allotments of lands in severalty to the members of the tribe, a number of mixed-bloods from the Nemaha Reservation, and among them the Peters family, came to the Omaha Reservation in the hope of securing allotments under the new law, and that this was denied them, your office

holding that under said act of August 7, 1882, none but members of the tribe and their half or mixed-blood relations residing with them at the date of the treaty of 1865, whose names are born upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments thereunder."

Commissioner Morgan in his communication under date of August 27, 1890, uses almost identically the same language as that quoted *supra* from the report of the Secretary of the Interior and as contained in the report of Commissioner Oberly referred to *supra*. (Rec., p. 159).

On March 2, 1889, an act of Congress was passed dividing a portion of the Sioux Reservation into separate reservations, etc., which contained a clause similar to that in the act of 1882, making it dependent for its validity upon the consent of the Indians. Hon. Richard Olney, Attorney General, under date of February 9, 1894, in an opinion to the Secretary of the Interior said of the said act of 1889: (20 Op. Atty. Gen'l. p. 712.)

"It will be noticed that the act under consideration was dependent for its validity upon the consent of the Indians. (Sec. 28.) In other words, it was substantially a treaty with the Sioux Nation; acts in this form having taken the place of the ancient Indian treaty since the latter was prohibited by act of Congress in 1871. By the agreement confirmed in this act the Sioux Nation gave up a large amount of territory, and the rights conferred on the nation or on individuals were in consideration there-

of. The persons entitled to such rights are the persons who at the time of the agreement constituted the Sioux Nation and were lawful members thereof."

If the construction put upon the act of 1882 by the Interior Department is not correct or not to be adhered to, disastrous consequences and confusion would be the inevitable result.

The moment it be conceived that membership in the tribe was not a prerequisite essential to the receiving of an allotment, then any person claiming to be a mixed blood could wantonly go upon the land, make an ostensible selection, occupy and cultivate it, without let or hindrance; if membership in the tribe was non-essential, then what right would the tribe have to protest. If membership be non-essential, then *any* full blood white man might squat upon the Reservation and make claim to an allotment of lands.

By such a loose construction of the statute all of the land on the Reservation not actually occupied by the members of the tribe, might be located upon and occupied by intruders and trespassers. This would be an outrage upon the tribal rights, and the tribe would be practically without remedy. It may be suggested that the government might eject these trespassers. This record contains a complete answer to such suggestion.

The Sloan family, the Peters family, the Frost family, the Barada family, the Kuhn family and others of a like class, have been petitioned against by the Omaha Indians. The Commissioner of Indian Affairs more than once ordered their removal; the Secretary of the Interior ordered their removal; the Indian Agent served notice upon them to remove; and finally some

of them were forcibly ejected, but within a few days they returned. This controversy between the tribe and these claimants has now gone on for 18 years, and it never will be ended until they are removed from the Reservation by a process issued from the court.

It is equally essential to the security of the rights of the Omaha tribe of Indians to enforce rigidly the construction of the act of 1882, that none shall be recognized as beneficiaries under the act unless they were *members* of the tribe when the act was passed. *The United States was dealing with the tribe and the membership thereof as it then existed.* The act contemplated a compact with the Omaha tribe of Indians as it *then* existed. It dealt with the tribe of Indians as it *then* existed. From the nature of things it could not be otherwise. It was not a past membership nor a future membership, any more than it was a past tribe or a future tribe, that was to give its "consent" in "open council" to the enforcement and fulfillment of said act.

It will be conceded that none of the complainants were recognized by the Omaha tribe of Indians as members thereof in the year 1882. None of them were participating with the tribe as members thereof in 1882. None of them were living upon the reservation in 1882,—with the exception of Margaret Sloan and Thomas L. Sloan—(who came there in 1881, but their membership was denied); their tribal claims were denied by the tribe and by the United States. They confessed they were not members of the tribe by their endeavor to become adopted into the tribe, and which adoption was also denied by a majority of the tribe and the Interior Department.

VIII

The Act of August 7, 1882, Should Be Construed in Relation to the Provisions of the Treaty of 1830 and the Treaty of 1865.

The Treaty of 1830 Was Not Abrogated by the Act of 1882.

The Act of 1882 Specially Refers to the Treaty of 1865 and the Right to Allotments Therein Provided.

(*a*) The act of March 3, 1871, which provided that thereafter no Indian tribe should be recognized as an independent power, "with whom the United States may contract by treaty," contains the following provision:

> "But no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe, prior to March 3, 1871, shall be hereby invalidated or impaired. (See Revised Stat., Sec. 2079; *Elk v. Wilkins*, 112 U. S., 107.)

Attorney General Olney said (20 Op. Atty. Gen'l, 712):

> "In other words, it was substantially a treaty with the Sioux Nation: acts in this form having taken the place of the ancient Indian treaty since the latter was prohibited by an act of Congress in 1871."

The act of 1882 does not abrogate the treaty of 1830 nor the treaty of 1865 any further than its provisions may be inconsistent with the treaty of 1865. Section 5 of the act of 1882 makes special reference to the treaty of 1865 and provides that the allotments under said act shall be in lieu of the allotments provided for in the treaty of 1865. In section 5 it is provided "which

allotment shall be deemed and held to be in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for which, for the most part, certificates in the names of individual Indians, to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided."

It will thus be seen that it is necessary to look back to the 4th article of the treaty of 1865 to ascertain who were entitled to allotments or assignments, and to find who were entitled to have or receive certificates of assignments of allotments under said treaty. Article 4 of the treaty of 1865 limited allotments to members of the tribe, "including their half or mixed blood relatives now residing with them."

Thus it was insisted between the United States and the Indian tribe in 1865, that the only persons who were entitled to allotments of lands in severalty were the members of the tribe as it existed in 1865, "including their half or mixed blood relatives now residing with them," and their descendants. The clause relating to the mixed bloods was a clause of limitation. The phrase "now residing with them" excluded all the mixed bloods not then residing with the tribe.

(*b*) In said Article 4 of the treaty of 1865 it is provided "said division and assignment of lands to the Omahas in severalty shall be made under the direction of the Secretary of the Interior, and when approved by him shall be final and conclusive."

Pursuant to the provisions of Article 4 of the treaty of 1865, under rulings and regulations prescribed by the Secretary of the Interior, a list of allotments were agreed to by the Omaha tribe of Indians in which was set down the name of the allottee and the description

of the land to which each allottee was entitled. (See p. 8 of this brief *supra*.) To the said list of allotments the chiefs of the Omaha tribe of Indians attached their certificate, "that the persons whose names are enumerated in the foregoing schedule are members of the Omaha tribe of Indians and entitled to selections of land in severalty under the provisions of Article 4 of the treaty of March 6, 1865, etc." (See p. 8 of this brief.) The said schedule of allotments was approved by the Indian Agent and by the Superintendent of Indian Affairs (see p. 10 of this brief), and the same was submitted to and approved by the Secretary of the Interior. (See p. 11 of this brief.)

Said schedule of allotments so adopted and approved by the Secretary of the Interior became "final and conclusive," and necessarily excluded all persons whose names did not thereupon appear, and it is conceded that no one of the complainants then resided on the Reservation, and that neither their names nor the names of their ancestors appeared in said schedule.

(*c*) The Interior Department has at all times constructed Section 5 of the Act of 1882 in connection with the provisions of Article 4 of the treaty of 1865. Commissioner Morgan, Aug. 27, 1890, expressed the views of the Interior Department as follows: (Rec. p. 160.)

> "That none but members of the Omaha tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865 whose names are borne upon the duly certified census roll of 1871, of the Omahas, which was approved by the Department—showing the names of those who were entitled to selections of land in severality under the treaty aforesaid, or the descendants of those so enrolled,

and such others as might have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder."

Commmissioner Price said under date of September 13, 1883: (Rec. p. 138.)

"The law under which the allotments to the Omahas are being made relates to the treaty of March 6, 1865, (14 Stat., 667) which should be taken as a guide as to determining who are entitled to allotments."

Commissioner Price in his instruction to Wilkinson, Indian Agent, under date of October 5, 1883, said: (Rec. p. 141.)

"That the law under which the allotments to the Omahas are being made relates to the treaty of March 6, 1865, there can be no question. That treaty provides that lands in severalty shall be assigned 'to members of the tribe, including their half or mixed blood relatives *now residing with them.*' I believe it is not contended and it seems perfectly clear that the present claimant was not living with the tribe at the date of said treaty. Manifestly then she was not a beneficiary under said treaty in respect of the allotments therein provided; for only those half or mixed blood relatives *then residing* with them could be so entitled."

Commissioner Oberly, in his report to the Secretary of the Interior, under date of November 14; 1888, said (rec. p. 151):

"The allotment of land on the Omaha Reservation was made under provisions of the Act of Congress approved August 7. 1882, (22 Stat., 341); and the said act expressly stipulates and

> provides that the said allotments shall be deemed and held to be in lieu of 'the allotments or assignments provided for in the fourth article' of the treaty with the Omahas, concluded March 6, 1865, and for 'whom, for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by 'the Commissioner of Indian Affairs, as in said Article provided.' "

In the same communication the Commissioner, as to the construction given to the act said (rec. p. 154):

> "From the foregoing, it will be observed that under the construction placed upon the act of August 7, 1882, by this office, none but members of the tribe and their half or mixed blood relations residing with them at the date of the treaty of 1865, whose names are borne upon the duly certified census roll of 1871, or their descendants, and such others as may have been lawfully admitted into the tribe, would be entitled to receive allotments of land thereunder."

Hon. Wm. F. Vilas, Secretary of the Interior, in his ruling in the Frank Peters case, under date of December 5, 1888, affirmed the correctness of the construction put upon the act of 1882 by the Commissioner of Indian Affairs. (See his letter quoted *supra*. Rec. p. 155.)

The Secretary of the Interior in his ruling rejecting the adoption of Margaret and Thomas L. Sloan, under date of September 6, 1894, follows the same rule of construction of the act of 1882, as a reason why the plaintiff should not be adopted into the Omaha Indian tribe. (See letter *supra*, Rec. pp. 156-8). The Secre-

tary of the Interior in his ruling to the Commissioner under date of November 17, 1896, again adhered to the construction of the act of 1882. (Rec. pp. 165-8). The Interior Department has at all times consistently and frequently ruled that the act of 1882, must be construed in connection with the provisions of article 4 of the treaty of 1865, and that line of construction has been adhered to from the date of the passage of the law in 1882 down to the present time, a period of twenty years.

IX

Accepting Allotments Under the Act of July 31, 1854, in Fulfillment of the Treaty of 1830 on the Nemaha Reservation, Extinguished the Right of the Complainants to Further Allotments.

(*a*) In the opening of this brief we said that the objective purpose of the treaty of 1830 was to forever separate those mixed bloods from the tribe, and we there stated the reasons therefor, which need not be repeated here. The effect of that separation was to take the complainants out of the membership of the tribe, if purchance they ever were members therein. It was the evident purpose that the Omaha Reservation should belong exclusively to the members of the tribe who remained thereon, and that the Nemaha Reservation should belong to the mixed bloods, who should remove thereto and accept allotments therein. When the mixed bloods moved on to the Nemaha Reservation and accepted allotments therein, they accepted the benefits of that treaty and acquiesced in its provisions and purposes.

These mixed bloods have no more right to now claim

an allotment on the Omaha Reservation, than the full blood members of the tribe would have to claim an allotment on the Nemaha Reservation.

The obligations under the treaty of 1830 were reciprocal. It was just as binding upon the mixed bloods to accept the provisions therein made for them, as it was for the full blood Indians to remain upon the Omaha Reservation. If the mixed bloods could claim the right to *two* allotments, then likewise the full blood Indians could equally claim the right to *two* allotments, one upon each Reservation. The mere suggestion of such a right discloses its unreasonableness and inconsistency. When the treaty of 1830 was made neither the Indians nor the government contemplated that the full blood Indians might deprive the mixed bloods of the use and benefits of the Nemaha Reservation. Neither did they contemplate that the mixed bloods who accepted the benefits of that treaty should deprive the full bloods of the benefits of the Omaha Reservation.

Again let us suggest that the position of the complainants is one of asserting greater rights and greater privileges than those which attach to the full blood Indians. The Nemaha Reservation, under the act of 1854, has been disposed of in fee simple to the mixed bloods. They have had the full benefits of it. To now permit them to have allotments upon the Omaha Reservation would be the bestowing upon them privileges and benefits greater than can be bestowed upon the full blood members of the tribe. Under the law the full blood members of the tribe can have but one allotment, and that limited to 160 acres for the head of a family. The complainants have already received 320 acres on the Nemaha Reservation, and are now

asking 160 acres more upon the Omaha Reservation. If they are right in this contention, the complainants, as heads of families, would receive 480 acres of land, while a full blood member of the tribe could receive but 160 acres as head of a family. Certainly it was not the intention of Congress that the act of 1882 should confer extraordinary benefits and gratuities upon the mixed bloods to the injury and detriment of the full blood.

(*b*) The Department of the Interior has frequently ruled that the treaty of 1830 was intended to separate the mixed bloods from the tribe, and that the treaty of 1865 only contemplated allotments to mixed bloods then residing with the tribe, and that the act of 1882 did not contemplate the giving of allotments to mixed bloods who had accepted allotments on the Nemaha Reservation, and who had not been re-adopted into, or were not members of the Omaha tribe of Indians when the act of August 7, 1882, was passed.

Commission Price in his instruction to the Indian Agent under date of October 5, 1883, said: (Rec. p. 141.)

> "The Omahas had already (by a former treaty, July 15, 1830,) provided for such of their half-breed brethren as were not residing with them at the date of the treaty aforesaid, and it was undoubtedly by reason of such prior beneficial provision that the instruction was made in the treaty of 1865 limiting the allotments to 'the half or mixed-blood relatives then residing with them.'"

He then states that the Barada family had been provided for on the Nemaha Reservation; and assigns

the same as a reason why the Barada family should not receive allotments under the act of 1882. (Rec. p. 141.)

A like line of reasoning and like statements run through all the communications between the Interior Department and the allotting agent, and the Interior Department and the Indian agent, and in the rulings of the Secretary of the Interior from 1883 down to the commencement of these litigations."

The Secretary of the Interior in his ruling in the Sloan cases under date of November 17, 1896, said: (Rec., p. 166.)

> "Mrs. Margaret Sloan received an allotment of 320 acres of land as a half-breed Omaha Indian under the provisions of article (10) of the treaty of July 15, 1830, with the Omahas, and their tribes. (7 Stat., 328-330.) Provision being made therein that the parties to the treaty might be permitted to make some provisions for their half-breeds, and particularly that they might bestow upon them the tract of country within the following limits, etc.

The Secretary then recited that Margaret Sloan received a patent under date of September 10, 1860, and William E. Sloan a like patent for 320 acres of land each on the Nemaha Reservation, and then states: (Rec. p. 167).

> "Their claims as such mixed-bloods were extinguished by the lands given them under the terms of the 10th article of the treaty named."

The Secretary then proceeds to show that the Omaha tribe of Indians who were parties to the treaty of 1830 and 1865, and whose consent was necessary to the act of 1882, understood the said treaties and the said act of 1882 in the same sense in which it has been

interpreted by the Interior Department, and said: (Rec. p. 167).

> "As showing that the Omahas so regarded this provision, they provided in their treaty of March 6, 1865, (14 Stat., 667, article 4) that allotments of land in their Reservation in Nebraska, should be given to 'their half or mixed blood relatives now residing with them,' and when many of the mixed bloods from the Nemaha Reserve went to the Omaha Reservation to secure more land, after the passage of the act of August 7, 1882, (22 Stat., 341), which provided for the sale of a part of the latter Reservation and allotment of land in severalty, the Omahas strenuously objected and called upon the Department to remove these half-breeds from their Reservation. They so objected to the Sloans. The claims of Margaret and her son William E. were extinguished prior to the birth of Thomas L."

Secretary Francis in the same judgment said: (Rec. p. 167).

> "The birthright claim of Margaret has been extinguished. Thomas L. never had such claim."

Secretary Bliss in his report in the Artemesia Frost case, under date of June 21, 1897, said: (Rec. pp. 168-9.)

> "Mrs. Frost is the daughter of Margaret Sloan, a mixed blood Omaha woman, whose case was decided adversely by the Department on November 17, 1896, on the ground that her 'birthright' claim had been extinguished under the provisions of Article X (10) of the treaty of July 15, 1830. * * * *
>
> "As showing that the Omahas regarded that

the claim of such mixed-bloods were extinguished by the lands given them under the provisions of the treaty cited, the following provision was made in Article IV (4) of the treaty with them of March 6, 1865 (14 Statutes, 667-668).

"The Omaha Indians being desirous of promoting settled habits of industry and enterprise among themselves by abolishing the tenure in common by which they now hold lands, and by assigning limited quantities thereof in severalty to the members of the tribe *including their half or mixed-blood relatives now residing* with them.

"By her own admission, Mrs. Frost's birthright claim has been extinguished. To admit her present claim would be an injustice to those of the tribe who have never received allotments, and who alone are entitled to participate in the division of the lands in the diminished reserve: would also be against public policy, and a violation of the rules and regulations of the Department, which prohibit more than one allotment to an Indian, for any reason whatever."

We wish particularly to draw attention to the last above quoted paragraph from the opinion of Secretary Bliss, to the point that the granting of these double allotments would be a violation of the rules and regulations of the Department, which prohibited the granting of more than one allotment to the same person under any circumstance whatsoever.

Interpretation put upon the treaty of 1830 and the Act of 1882 by the Interior Department, to the effect that a half-breed who had accepted an allotment under

said treaty was not entitled to an allotment under the act of 1882, should have great weight.

Hastings &c. R. v. Whitney, 132 U. S., 357-366.

United States v. Moore, 95 U. S., 760-763.

United States v. Winona, &c., 32 U. S. App., 296.

Edward's Lessee v. Darby, 12 Wheat., 210.

In *Hastings, &c. R. v. Whitney, supra*, it was said, p. 366:

> "It is true that the decisions of the Land Department on matters of law are not binding upon this court in any sense. But on questions similar to the one involved in this case they are entitled to great respect at the hands of any court. In *United States v. Moore*, 95 U. S., 760, 763, this court said: 'The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. * * * The officers concerned are usually able men and masters of the subject. Not unfrequently they are the draughtsmen of the laws they are called upon to interpret.'"

In *United States v. Moore, supra*, Mr. Justice Swaine said, page 763:

> "The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons."

In *Edwards Lessee v. Darby*, 12 Wheat., 210, the Court said:

> "In construction of a doubtful and ambiguous

law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect."

In *Smythe v. Fiske*, 23 Wall., 374, Mr. Justice Swayne, in construing a revenue law, said (p. 382):

"The construction we have indicated of these statutes is that given to them in their practical administration by the Treasury Department ever since their enactment. This, though not controlling, is not without weight, and is entitled to respectful consideration."

In *United States v. Pugh*, 99 U. S., 265, Mr. Chief Justice Waite said (p. 269):

"It is a familiar rule of interpretation that in the case of a doubtful and ambiguous law, the contemporaneous consideration of those who have been called upon to carry it into effect is entitled to great respect. *Edward's Lessee v. Darby*, 12 Wheat., 210. While, therefore, the question is one by no means free from doubt, we are not inclined to interfere at this late day with a rule which has been acted upon by the Court of Claims for so long a time."

In *Hahn v. United States*, 107 U. S., 402, Mr. Justice Blatchford said (p. 406):

"That such construction did not appear to it unreasonable, and might well have been reached in the exercise of a sound judgment, and that regarding the statute as ambiguous, all the circumstances of the case were such as to justify the application of the principle of interpretation sanctioned by this court in *United States v. Pugh*, 99 U. S., 265, that, 'in the case of a doubtful and ambiguous law, the contemporaneous construction of those who have been

called upon to carry it into effect, is entitled to great respect. *Edward's Lessee v. Darby*, 12 Wheat., 210,' and where this court refused to interfere with such construction after it had been acted upon for a long time."

In the *5 Per Cent Cases*, 110 U. S., 471, Mr. Justice Grey said, (p. 484:)

"The conclusion to which the court is brought upon a consideration of the language of the statutes relied on, and of the nature of the subjects to which they refer, accords with the contemporaneous and uniform construction given to them by the executive officers charged with the duty of putting them into force. If the court had a doubt of the true meaning of their provisions, this practical construction would be entitled to great weight. *Edwards v. Darby*, 12 Wheat., 206; *United States v. State Bank of North Carolina*, 6 Pet., 29; *United States v. McDaniel*, 7 Pet., 1; *Surgett v. Lapice*, 8 How., 48; *Smythe v. Fiske*, 23 Wall., 374; *United States v. Moore*, 95 U. S., 760; *United States v. Pugh*, 99 U. S., 265; *Swift Co. v. United States*, 105 U. S., 691, 695."

In *Brown v. United States*, 113 U. S., 568, Mr. Justice Woods said, pp. 570-1:

"It must be conceded that were the question a new one, the true construction of the section would be open to doubt. But the findings of the Court of Claims show that soon after the enactment of the act the President and the Navy Department construed the section to include warrant as well as commissioned officers, and that they have since that time uniformly adhered to that construction, and that under

its provisions large numbers of warrant officers have been retired. This contemporaneous and uniform interpretation is entitled to weight in the construction of the law, and in a case of doubt ought to turn the scale."

Mr. Justice Woods then reviews many of the prior cases upon this branch of the construction of a statute, and thence concluded, p. 571:

"These authorities justify us in adhering to the construction of the law under consideration adopted by the executive department of the government, and are conclusive against the contention of appellant, that Sec. 23 of the act of August 3, 1861, did not apply to warrant officers."

In *Peabody v. Stark*, 16 Wall., 240, Mr. Justice Miller in construing the Internal Revenue Act, said, p. 243:

"In the absence of a clear conviction on the part of the members of the court on either side of the proposition in which all can freely unite, we incline to adopt the uniform ruling of the office of the internal revenue Commissioners."

In *United States v. Hill*, 120 U. S., 169, Mr. Justice Blatchford said, p. 182-183:

"In *Edward's Lessee v. Darby*, *12 Wheat.*, 206, 210, it was said:

"In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect. To the same effect are *United States v. Dickson*, 15 Pet., 141, 145; *United States v. Gilmore*, 8 Wall., 330; *Smythe v. Fiske* 23 Wall.,

374, 382; *United States v. Moore*, 95 U. S., 760, 763; *United States v. Pugh*, 99 U. S., 265, 269; *Hahn v. United States*, 107 U. S., 402, 406; *and Five per cent. Cases*, 110 U. S., 471, 485. In the case of *Brown v. United States*, 113 U. S., 568, the same doctrine was applied, the cases in this court on the subject being collected, and and it being said, that a 'contemporaneous and uniform interpretation' by executive officers charged with the duty of acting under a statute 'is entitled to weight' in its construction, 'and in a case of doubt ought to turn the scale.' A still more recent case on the subject is *United States v. Philbrick, ante*, 52, where this language is used: 'A contemporaneous construction by the officers upon whom was imposed the duty of executing those statutes is entitled to great weight; and since it is not clear that that construction was erroneous, it ought not now to be overturned.'"

In *United States v. Philbrick*, 120 U. S., 52, Mr. Justice Harlan said, p. 59:

"A contemporaneous construction by the officers upon whom was imposed the duty of executing those statutes is entitled to great weight; and since it is not clear that that construction was erroneous, it ought not now to be overturned. See *Hahn v. United States*, 107 U. S., 405, and *Brown v. United States*, 113 U. S., 571, and authorities cited in each case."

In *United States v. Johnson*, 124 U. S., 236, Mr. Justice Harlan said, p. 253:

"In view of the foregoing facts the case comes fairly within the rule often announced by this court, that the contemporaneous construction of a statute by those charged with its

execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous. *Edwards v. Darby*, 12 Wheat., 206, 210; *United States v. Moore*, 95 U. S., 760; *Hahn v. United States*, 107 U. S., 402; *United States v. Philbrick*, 120 U. S., 52, 59."

In *Schell's Executors v. Fauche*, 138 U. S., 562, Mr. Justice Brown said, p. 572:

"As early as 1803, it was held by this court, in *Stuart v. Laird*, I Cranch, 299, 309, that a practical construction of the constitution that the Justices of the Supreme Court had a right to sit as circuit judges, although not appointed as such, was not open to objection."

'It is sufficient to observe,' says the court, 'that the practice, and acquiescence under it, for a period of several years, commencing with the organization of the judical system, affords an irresistible answer, and has indeed fixed the construction. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled. Of course, the question is at rest, and ought not now to be disturbed.' In all cases of ambiguity, the contemporaneous construction, not only of the courts but of the departments, and even of the officials whose duty it is to carry the law into effect, is universally held to be controlling. *McKeen v. DeLancy's Lessee*, 5 Cranch, 22; *Edwards' Lessee v. Darby*, 12 Wheat., 206; *United States v. Alexander*, 12 Wall., 177; *Peabody v. Stark*, 16 Wall., 240; *Hahn v. United States*,

107 U. S., 402; *Rogers v. Goodwin*, 2 Mass., 475; *Endlich on Stats.*, sec. 357."

In *United States v. Alabama R. R. Co.*, 142 U. S., 615, Mr. Justice Brown said, p. 621:

"We think the contemporaneous construction thus given by the executive department of the government, and continued for nine years through six different administrations of that department—a construction which, though inconsistent with the literalism of the act, certainly consorts with the equities of the case—should be considered as decisive in this suit. It is a settled doctrine of this court that, in case of ambiguity, the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute."

In *United States v. Winona R. R. Co.*, 32 U. S. Appeals, 274, Sanborn, C. J., said, p. 295-296:

"Up to that time the officers of the Land Department had uniformly held that the railroad company had earned and was entitled to these lands under the acts of Congress. In *Hastings & Dakota Railroad Company v. Whitney*, 132 U. S., 357, 366, the Supreme Court said of the action of these officers in a similar case: 'It is true that the decisions of the Land Department on matters of law are not binding upon this Court in any sense. But on questions similar to the one involved in this case they are entitled to great respect at the hands of any court.' In *United States v. Moore*, 95 U. S., 760, 763, this court said: 'The construction given to a statute by those charged with the duty of executing it is always entitled to the

most respectful consideration, and ought not to be overruled without cogent reasons. * * * The officers concerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret. See also *Brown v. United States*, 113 U. S., 568, 571, and cases cited; *United States v. Burlington &c. Railroad*, 98 U. S., 334, 341; *Kansas Pacific Railroad v. Atchison Railroad*, 112 U. S. 414, 418.'"

In *United States v. Barber*, 41 U. S. Appeals, 424, in speaking of the interpretation relating to interest on claims, the court said, p. 433:

"This is the construction given by the executive departments, and in *Brown v. United States* 113 U. S., 568, 571, citing *Edwards' Lessee v. Darby*, 12 Wheat., 206, it is said: 'In the construction of a doubtful and ambiguous law the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to great respect.' See also *Atkins v. The Disintegrating Company*, 18 Wall., 272; *Smythe v. Fiske*, 23 Wall., 374, and *United States v. Moore*, 95 U. S., 760, 763. In the latter case the court observed that 'the construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. The officers concerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret.'"

In *Grossett v. Townsend*, 86 Fed., 908, the Court said (p. 912):

> "This was the construction placed upon the law by the officers of the Treasury Department at the time when it went into effect. In a case of doubt as to the meaning of a statute, it is proper to consider the contemporary construction placed upon it by those upon whom the duty is imposed of enforcing its provisions. *Schell's Ex'rs v. Fauche*, 138 U. S., 562, 11 Sup. Ct., 376; *Hahn v. U. S.*, 107 U. S., 402, 2 Sup. Ct., 494; *U. S. v. Pugh*, 99 U. S., 265; *Peabody v. Stark*, 16 Wall., 240; *Edwards' Lessee v. Darby*, 12 Wheat., 206."

In *J. D. Peters*, 56 U. S. Appeals, 713, the Court said (p. 721):

> "This was the construction placed upon the law by the officers of the Treasury Department at the time when it went into effect. In a case of doubt as to the meaning of a statute it is proper to consider the contemporary construction placed upon it by those upon whom the duty is imposed of enforcing its provisions. *Schell's Executors v. Fauche*, 138 U. S., 562; *Hahn v. United States*, 107 U. S., 402; *United States v. Pugh*, 99 U. S., 265; *Peabody v. Stark*, 16 Wall, 240; *Edwards' Lessee v. Darby*, 12 Wheat., 206.

In *United States v. Dean Linseed Oil Company*, 57 U. S. App., 716, the court said, p. 722:

> "The importance of adherence to a long continued and reasonable construction of a statute by the officers of the Department whose duty it has been to execute it, when the statute is of an ambiguous character, has been frequently commented upon by the Supreme Court, ever

since the case of *Edward's Lessee v. Darby*, 12 Wheat, 206, 210, in which the court said: 'In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect.' The uniform construction of the Treasury Department seems to us reasonable and equitable to the importer and the Government."

In *Bloxham v. Consumers', Etc., R. R. Co.*, 36 Fla., 519 (51 Am. St. Rep., 49), the court said:

"In such case we think the greatest deference and respect should be paid by this court to the long prevailing construction of the statute made by the Executive Department of the State Government, and we will not interfere with the same."

In *Solomon v. Commissioners of Cartersville*, 41 Ga., 157, the court said, adopting the practical construction of a statute made by the Executive Department of the Government, that if the matter were before them as an original, independent proposition they would be inclined to hold differently, but yielded their own views to such practical construction.

In *Wright v. Forrestal*, 65 Wis., 341, the court said, pp. 348, 349.

"The construction given to a statute by the body of men or officers who are directed to act upon it is always entitled to weight, and their construction should not be overridden by the courts, unless it be contrary to the clearly expressed meaning of the law."

In *Westbrook v. Miller*, 56 Mich., 148, the court said, p. 151:

"When, in the performance of executive du-

> ties, it becomes necessary for the executive department to construe a statute, great deference is always due to its judgment; and the obligation is increased by the lapse of considerable time before its acts are called in question. This has been several times held by the Federal Supreme Court, and by the subordinate courts of the Federal system, and a reference to a few of the cases will be sufficient to show the current of decision."

And again the court said, p. 152:

> "The cases in other states which hold the same doctrine are too numerous for citation, but as they all rest upon the inconvenience that would arise from unsettling what in good faith has been done in the necessary discharge of public duty, many citations would only serve to show the frequency in which the occasions for the application of the principle arose."

In *Commonwealth v. Lockwood*, 109 Mass., 323, (12 Am. Rep., 699), the Supreme Court of Massachusetts applied the same rule of construction to the constitution:

> "If the words of the constitutional provision could be deemed ambiguous, their interpretation must be held to be settled by the contemporaneous construction and the long course of practice in accordance therewith."

The complainants endeavored to break the force and effect of the rulings of the Department, by introducting evidence to show that certain persons and their descendents who have received allotments on the Nemaha Reservation, also received allotments under the Act of 1882. At most these would be mere inci-

dents not material to the present cases. (1) In that they do not relate to any of the present complainants. (2) And for the reason that there is nothing in the record to show that the Department was ever advised of said double allotment.

How said persons came to receive allotments under the Act of 1882, the complainants do not explain. It must be presumed that they were properly adopted into the tribe, and received the allotment with the consent of the tribe. Persons thus recognized by allotment under the Act of 1882, were the Cabney, Paul, Fuller, Scott, and Moncravey families. The last above names appear on the allotment book of 1871, which was approved by the Chiefs of the tribe and subsequently approved by the Secretary of the Interior. (Rec., p. 171-182.)

The presumption would be that the names were properly put upon the allotment book, and that therefore were properly recognized as members of the tribe in 1871, and entitled to a certificate of allotment under the treaty of 1865. Having received certificates of allotment under the treaty of 1865, pursuant to the schedule of allotments, they became and were entitled under the provisions of Section 5 of the Act of 1882, to an allotment under said act as a matter of course. For it is provided in the said Section, that the allotment so to be made shall be in lieu of the allotments made under the treaty of 1865, and that persons holding certificates of allotment under the said treaty shall be entitled to select an allotment under the Act of 1882. It also follows that the children of persons whose names appear on the tract book would be members of the tribe.

But neither the names of the complainants nor their

ancestors appear upon the allotment book of 1871, and they have not been adopted into the tribe.

In further confirmation of the uniformity of the rulings of the Interior Department upon the point under discussion, we refer to the ruling upon the application of Joseph O'Pelt to be enrolled as a member of the Otoe tribe of Indians, and for an allotment of land upon the Otoe Reservation in Oklahoma.

O'Pelt was one of the mixed-blood Otoes who received the benefit of an allotment on the Nemaha Reservation, under the act of July 31, 1854. The Secretary of the Interior denied the right of the Joseph O'Pelt and nine members of his family, to become enrolled among the Otoes, and denied his right to allotment upon the Otoe Reservation.

The ruling of the Secretary is as follows: (Rec., pp. 169-170).

DEPARTMENT OF THE INTERIOR,
WASHINGTON, November 10, 1897.

The Commissioner of Indian Affairs:

SIR: I acknowledge the receipt of your communication of June 25, 1894, in the matter of the applications of Joseph O'Pelt and the nine others of his family for enrollment as members of the Otoe tribe of Indians in Oklahoma, and to be given allotments as such.

It is shown by your letter that this family, or such of them as were in being at that time, enjoyed the benefits of the Act of July 31, 1854, and received allotments on the Great Nemaha Half Breed Reservation, and also that their applications for enrollment as members of the Otoe tribe of Indians have twice been rejected by the Otoes in council.

You submit whether the applications of the

O'Pelt family be again submitted to the Indians for their action in open council; and, in the event of the adoption of said applicants by the tribe, for the purpose of giving them allotments on the Otoe reservation, ask whether the Department will authorize the making of much allotments to them.

In view of all the circumstances, I see no reason for again submitting the application of this family to the Indians for their action in open council; they seem to have enjoyed the benefits of allotments as mixed bloods on the Great Nemaha half-breed reservation, Nebraska, and are not entitled to further allotment on the Otoe reservation, Oklahoma.

The papers submitted with your letter are herewith returned.

Very respectfully,

C. N. BLISS,

Secretary."

It may be suggested that the complainants are asserting a right to allotments upon the Omaha Reseruation *in their own right* and not through their ancestors. There is no force in that suggestion. If the purpose of creating the Nemaha Reservation was to separate the mixed bloods from the tribeand the mixed bloods did go upon the Reservation and accept allotments of lands thereon, *the act of separation included the parents and the children living with them.*

The act of accepting allotments was for the benefit of the family. If such allotment extinguished the birthright of the parents, it likewise extinguished the birthright of the minor children.

There is not a single complainant but who received an allotment in person on the Nemaha Reservation, or

who was not at the time a minor child of a parent that had received an allotment upon said Nemaha Reservation. It would destroy the whole efficacy and purpose and intent of the treaty of 1830, to say that the parent would be dismembered from the Omaha tribe by the taking of an allotment on the Nemaha Reservation, but that the children of such parents could return to the Omaha Reservation and claim membership in the Omaha tribe of Indians, and the right to allotment of lands upon the Omaha Reservation. The utility of the separation contemplated by the treaty of 1830 would be thereby destroyed.

This is further manifest from the fact that when these mixed bloods accepted the benefits of the Nemaha Reservation, their minor children living with them also went to the Nemaha Reservation, and the allotments provided for on the Nemaha Reservation were for the families or heads of families and which necessarily included minor children. Again some of the complainants were born upon the Nemaha Reservation of parents who had accepted the benefits of the Nemaha Reservation, and if the birthright of the parents was extinguished by the receiving patents for lands on the Nemaha Reservation, it would necessarily follow that their children thereafter born on the Nemaha Reservation would not have any birthright to allotments on the Omaha Reservation.

31281

XI

The Omaha Tribe of Indians Constantly and Persistently Protested that the Complainants were not Members of the Omaha Tribe of Indians, and were not Entitled to Allotment of Lands.

In addition to the Department rulings that the complainants were not members of the Omaha tribe of Indians, and were not entitled to receive allotments under the act of 1882, the *Indian tribe* has constantly and persistently protested against the complainants being members of the tribe or being entitled to an allotment of lands.

(*a*) The omission of the names of the Sloan and Barada and Monette families from allotment book of 1871, was a declaration by the Chiefs of the Omaha tribe of Indians, that the complainants were not then members of the tribe and were not entitled to allotments of lands. It was so treated by the Commissioner of Indian Affairs in his letter of instruction to the Allotting Agent under date of September 13, 1883, when he refers to the fact that neither the name of Celestia Kuhn nor her father Antoine Barada, appear upon the schedule which had been certified by the tribe under date of December 30, 1870, and approved by the Secretary of the Interior, January 26, 1871. (Rec. p. 138.)

The effect of the allotment book of 1871 was again considered by the Commissioner of Indian Affairs in his letter of instruction to the Indian Agent under date of October 5, 1883, as proof that the Barada family

were not recognized as members of the tribe. (Rec. p. 141.)

(*b*) Allotting Agent Fletcher, in a report to Commissioner in the Peters case, under date of July 28, 1883, said: (Rec. p. 135.)

> "Since my arrival a full council has been held on the subject of admitting these mixed bloods from Nemaha and elsewhere at which Mrs. Peters and her sister were present, and the voice of the councilmen and the people were unanimous that mixed bloods be not allowed to take land under the present act."

In the concluding part of her report she speaks of being: (Rec. p. 135.)

> "the unanimous wish of the tribe expressed in open council that Mrs. Peters do not receive allotments of land."

In the Allotting Agent's report to the Commissioner under date of September 25, 1883, relating to the Kuhn family, it was said: (Rec., p. 139.)

> "The tribe are unanimous against these mixed bloods remaining on the reservation, and council was held to-day in which the councilmen urged them to free them at once from these people who are trying to eat up the land."

In the report of the Alloting Agent in the Margaret Sloan case under date of April 28, 1884, it was said: (Rec., p. 146.)

> "Her claims have been fully investigated in an open council of the tribe."

(*d*) The Omaha tribe of Indians under date of March 19, 1888, sent to the Commissioner of Indian

Affairs a protest in writing against the Peters family and others of like class, occupying or receiving lands upon the reservation and which is quoted *supra*. In said protest it is recited that the tribe had told the Peters family to go away, and that because they would not go the appeal was made to the Commissioner of Indian Affairs to remove them. (Rec., pp. 142-3.)

(*e*) In the report of Commissioner Oberly to the Secretary of the Interior, under date of November 14, 1888, he stated: (Rec., p. 151.)

> "The Indians of the reservation manifested the most determined opposition to their (mixed bloods) being allowed to participate in the distribution of the land."

(*f*) In the letter of the Commissioner to Thomas L. Sexton under date of August 27, 1890, Hon. T. J. Morgan said: (Rec., p. 160.)

> "The Indians of the Omaha Reservation manifested the most determined opposition to such persons, being allowed to participate in the distribution of the land, * * under date of March 19, 1888, sixty-five Indians of the Omaha Reservation addressed a communication to this office protesting against giving an allotment to Mr. Peters, who was alleged to belong to one of the mixed-blood families, provided with land on the Nemaha Reservation by the Omaha tribe by the 10th Article of the treaty of July 15, 1830."

(*g*) In January, 1891, a duly accredited delegation of Omaha Indians waited on the Commissioner of Indian Affairs at Washington and urged the removal of these mixed-blood intruders. (See letter of Commissioner to Secretary of the Interior, under date January

12. 1891.) (rec. p. 163.) Subsequently, under date of January 13, 1891, the Commissioner, in his instructions to Ashley, Indian Agent, said that the delegation of Indians then in Washington specially objected to William Barada, Thomas Sloan, Mrs. Fulton Peters, Frank Peters, Walter Peters, and Mrs. Sailor and their families. (Rec., p. 165.)

(*h*) When Thomas L. Sloan made an effort to have Margaret Sloan and himself adopted into the tribe, the same was resisted by a majority of the tribe, and that was one of the reasons assigned by the Secretary of the Interior for refusing their adoption. (See the Secretary's letter to Commissioner under date of September 6, 1894.) (Rec., pp. 156-8.)

(*i*) In addition to the above record evidence of council meetings of the tribe we have on file the evidence of Anna Cabney, White Horse, Sinda-ha-ha and others, that council meetings were held while Alice C. Fletcher was making allotments in 1883 and 1884 to consider who were and who were not entitled to allotments under the act of 1882.

The council meetings above recited and the protests above noted are evidence of a fixed and determined purpose on the part of the Omaha tribe of Indians not to receive the mixed blood complainants into the tribe, and is proof of a constant and repeated declaration on their part, that they did not recognize the complainants as members of the Omaha tribe of Indians. That was a subject matter that they ought to know more about than anybody else.

XII

Complainants not Entitled to the Particular Lands in Dispute.

The Disputed Lands Have Been Allotted and Patented to Other Persons.

Lands Have Been Reserved for the Complainants if it be Ultimately determined That They Are Entitled to Allotments.

The Lands so Reserved are the Lands Upon Which the Complainants Have Their Place of Residence in so far as Any of Them Reside Upon the Reservation.

It appears in the stipulation of facts filed in the Sloan case (Rec. pp. 72 to 74) in the Peters case (Rec. pp. 357 to 359) and in the Monette case (Rec. pp. 490-1) that allotting agent Rankin investigated the claims of the several complainants to the different tracts of land to which they asserted selections and likewise examined into the claims of different members of the Omaha tribe of Indians, who asserted a selection to the same lands or parts thereof for allotment. In many instances the allotting agent found that the Indian claimant had made a prior selection to, or had a better claim to parts or parcels of the land in controversy, than the complainants. In such cases the allotting agent made an allotment to the Indian claimants who are made co-defendants, but in every instance (with possibly one exception) reserved for the complainants the land upon which they had their respective habitations and improvements.

To illustrate the difficulties which the allotting agent labored under in determining the priority of selections

between the complainants and the present patentees, we need but look at the uncertainty and vagueness of the facts presented in the respective cases, as to when the contending parties first made their selections. There was no manner of keeping a record of selections. An Indian would go upon a tract of land and proclaim *to himself* that was his selection. Such was the manner in which Artemesia Frost states that she made her selection. There was no entry of the selection in any record book. There was no notification given to anybody of the selection. (Rec. p. 105).

In some instances the claimant would plow a single furrow around the land. A few years would go by and the furrow would become tramped out by grazing cattle. Another Indian would come along and select the same land by again plowing around it or by enclosing a part of it by a fence, and then assert a prior right by selection.

Again the priority of selection depended frequently upon the year when the selection was made, but the Indians do not know years by number. They do not compute time in that way. An Indian cannot tell you in what year he was born, nor in what year an event happened. The half-breeds may be able to fix dates by years, but that fact in a measure enables the complainants to take advantage of the full blood Indians.

The court will see by an examination of the proofs in the cases that if it should undertake from this limited evidence to investigate the priorities of selections by respective claimants, that it would be entering upon the domain of vague speculation. Let us take a few illustrations:

In Doc. T. 174 the suit was originally brought in the name of Margaret Sloan. It is now prosecuted in

the name of John M. Sloan, Thomas L. Sloan and Artemesia Frost as the heirs of Margaret Sloan and who make claim to the lands which it is pleaded had been selected by Margaret Sloan. It appears from the testimony of the complainant's witnesses, Anna Cabney and the plaintiff Artemesia Frost, that Margaret Sloan claims to have selected for a home and lived upon the N. ½ of the N. E. ¼, Section 20, T. 24, R. 8. It is stipulated as a fact that Margaret Sloan lived on the above described land, (See par. 15, Stip. 174,) (Rec. p. 64), that this was her home residence, a question of fact about which there is no controversy.

It is claimed in the pleading that she was the head of a family and therefore entitled to 160 acres. She was not the head of a family. Her husband Thomas Sloan did not die until 1893 (See par. 12, Stip. Doc. T. 174.) (Rec. p. 63.) The children had long passed the age of minority. Artemesia Frost was the youngest, born in 1848, John M. Sloan never lived on the Reservation with Margaret Sloan, but lives in Aspen, Colorado. William E. Sloan died in 1865. (See par. 13, Stip. T. 174.) (Rec. p. 63.) Artemesia Frost married Leonard Frost 1870. (See par. 18, Stip., T. 174.) (Rec. p. 65.) Thomas L. Sloan, the grandson, moved to Pender in 1891, where he has since lived as the head of his own family, and engaged in the practice of law. (See par. 15, Stip. Doc. T. 174.) (Rec. p. 64.)

In no sense of the word was Margaret Sloan the head of a family either before or after her husband's death. Yet, pending this litigation there has been reserved 160 acres, to-wit: The N. E. ¼ of section 20,

T. 24, R. 8, E., and which includes the land on which she lived.

About 1893 it is asserted that Margaret Sloan made claim to 80 acres of additional land, to-wit: S. W. ¼ of N. E. ¼ and S. E. ¼ of N. W. ¼, section 35, T. 25, R. 7. It will be noted that the additional land selected was in a different township and a great distance from the land on which Margaret Sloan lived. There are no proofs in the case to show that Margaret Sloan personally had anything to do with or knew anything about the selection of the land sec. 35, T. 25, R. 7.

Stephen J. Snyder in his deposition for the complainants states that he was hired by Thomas L. Sloan in the year 1893, to break up the land in Sec. 35, T. 25, R. 7, for which Thomas L. Sloan paid him $180.00, and that he and his brother continued to occupy and live upon said land from 1893 to 1897. (Rec. p. 85). That when they sold any of the crops they accounted to Thomas L. Sloan for the proceeds of the sale, and that no other persons except the Snyders lived upon the said land from 1893 to 1897. During said years they put improvements upon said land valued at about $900.00, to-wit: breaking $120.00, fencing $25.00, dwelling house $600.00, barn and outbuildings $200.00, well $50.00. (Rec. p. 87).

Query: Why did Thomas L. Sloan select said land and hire the said Snyder to occupy and put these improvements upon it, and then subsequently assert claim to it in the name of Margaret Sloan when there is not a word of testimony that Margaret Sloan ever saw the lands or the improvements, or ever wished for the lands or ever authorized Thomas L. Sloan or anybody

else to make the said claim or the said improvements, and it is perfectly clear that she did not furnish a dollar of money for the improvements upon the said lands, and she had no right, title or interest therein. The *answer* is that Thomas L. Sloan was making claim for other lands *in his own* name, hence could not claim these lands, so he makes the claim in the name of his grandmother. The magic hand of Thomas L. Sloan is shown in this matter from par. 17, Stip. Doc. T., 174, (rec. p. 64), whereby it appears that Thomas L. Sloan selected the N. ½ of the N. W. ¼ of the said selection 35, and the N. ½ of the S. W. ¼ of said section 35, T. 25, R. 7, for John M. Sloan, who never was on the Omaha Reservation and lives in Colorado. It will be observed that the two selections adjoin.

Now on the contrary the Grants claim a priority of selection to the lands which the Snyder's occupied for Thomas L. Sloan. It further appears that the surrounding land, to-wit: (Rec., p. 75.) the N. ½ and S. E. ¼ of the N. E. ¼ of Sec. 35, T. 25, R. 7, had been patented to other members of the Grant family in 1883-4, and which fact put the Grants in possession of the adjoining land ten years before the Snyder's went upon it under the employment of Thomas L. Sloan.

John M. Sloan Case. We have above recited the land selected for John M. Sloan by Thomas L. Sloan. In par. 17, Stip. 174, it is agreed that John M. Sloan never had a residence on the Omaha Reservation. His wife came to Pender in 1893 on a visit to Thomas L. Sloan, and she and Thomas L. Sloan agreed upon the N. ½ of the N. W. ¼ of S. 35, T. 25, R. 7, and the N. E. of the N. E. and the N. E. of S. W. of S. 34, T. 25, R, 7, as the land which should be claimed for allotment in the name of John M. Sloan, (Rec., p. 64.)

It appears from the testimony of William F. Springer filed in the John M. Sloan case that the land claimed for John M. Sloan was broken by Charles M. Snyder, who had possession and control under the direction of Thomas L. Sloan (Rec., p. 925). There is nothing in the record to show that John M. Sloan had any personal knowledge of or requested the making of this selection, or that he ever expended or authorized a dollar of expenditure to break up the lands. The visit of his wife to Thomas L. Sloan does not carry with it any evidence that her visit was for the purpose of selecting land. John M. Sloan has not verified a petition in the case, and in the injunction hearings did not make an affidavit in the case, but all these matters were done by Thomas L. Sloan and his hired man, Snyder

It appears from the stipulation of facts in the Jennie M. Arnold case that Thomas L. Sloan has charge of the land claimed in her name and "Thomas L. Sloan has kept all the proceeds arising from the farming of the land except what he may have spent in this litigation and breaking up for farming and holding possession of the same." (Rec., p. 466.)

In a general phrase Thomas L. Sloan is in possession of all these lands and of others, and is himself taking all the fruits of the cultivation and seems to be the real party in interest.

Artemesia Frost Case. The magic hand of Thomas L. Sloan is seen in a similar manner in the Frost claims. There is claimed for Philemon H. Frost the S. ½ of the N. E. ¼ of S. 34, T. 25, R. 8 (Rec., p. 73). It appears from the testimony of Wickersham for the complainant (Doc. T., 507) that the above land had been claimed by J. M. Wickersham, who had made improvements thereon to the value of $300.00, and that in the

year 1891 Wickersham made an arrangement with Thomas L. Sloan for the surrender of his claim to the land for an agreed price. (Rec., p. 825-828.)

It does not appear that Philemon H. Frost was a party to the above transaction, or authorized it or furnished the money. The only person known in connection with the Philemon Frost selection is Thomas L. Sloan.

Artemesia Frost never made a declaration of claim to the lands in controversy. In fact, the lands which she claims to have selected were the lands which were designated by Thomas L. Sloan.

Monette Case. The Monette case furnishes a splendid example of the uncertain manner by which the claimants undertake to prove priority of claim. The heirs of Mary Monette claim land in Sec. 13, T. 25, R. 6, which has been alloted to Silas and Baptisti Hallowell and there is a controversy over priority of claim. The Monette's in order to establish their claim conceded that Alfred Hallowell, the father of Silas and Baptisti, had made the prior claim to the lands in dispute, but insisted that Mary Monette had purchased from Alfred Hallowell his right to said land and agreed to pay him therefor $50.00.

This pretended claim of purchase is asserted by Mitchell Monette, a son, and Cassie M. Karch, a daughter of Mitchell Monette. (Rec., p. 492.) It appears that Alfred Hallowell had selected said land in the year 1892 and plowed around the same in proof of his selection, and in the year 1893 made a written lease of said land for a period of five years. (Rec., p. 493.)

In addition to the foregoing S. H. Campbell states that he staked around 80 acres of said land for Alfred Hallowell, and broke up 40 acres of said land. (Rec.,

p. 494.) The fact of the selection and breaking of said land by Alfred Hallowell is not questioned. The testimoney of Michell Monette and Casse M. Karch to the point that their mother had purchased the land from Hallowell is denied by him, and it appears that *neither* Mitchell Monette or Cassie M. Karch could talk the Omaha *Indian* language and Alfred Hallowell can not talk the *English* language. Hence, it would be impossible for Mitchell Monette and Cassie M. Karch to know anything of said purchase except by heresay. (See Hallowell's testimony, Rec., p. 522.)

It is perfectly clear from the testimony of Mitchell Monette that he, in fact, knew nothing about said purchase. In his testimony he states that Alfred Hallowell was a visitor at the Monettes in 1892 and the talk was in Indian language, which he did not understand. (Rec., p. 520-521.)

Q. Was there any part of the conversation in respect to the land which you, from the talk, yourself understood was a conversation relating to that particular land?

A. Just by the motions that he made, and pointing of it.

The same may be said of Cassie M. Karch, that she really knew nothing of this purchase at all. We do not have the testimony of Mary Monette on the subject.

After all the foregoing testimony had been taken David Monette undertakes to support the purchase of the Hallowell selection, but he, too, only partially understands the Indian language and bases his testimony on what Mary Monette said to him. (Rec., p. 553.)

It is patent, therefore, that the complainants have

failed to make proof of a purchase, and without which, confessedly Hallowell had the prior selection.

It appears from the testimony of William F. Springer, Doc. T. 364, that he was the interpreter of Allotting Agent Rankin, (rec. p. 523) "and that he was present with Rankin during the interview with the Indian claimants for allotments, and that the Monettes did not make any claim or statemet to Rankin, the allotting agent, in his presence or hearing that they had purchased the Hallowell ground; and that he never heard of this claim of the Monettes of the purchase of the Hallowell claim until the taking of this testimony."

The complainants did not make claim to Allotting Agent Rankin for allotment of lands in controversy. William F. Springer, the interpreter for Rankin, states: (See Stip. Doc. T. 364.) (Rec. p. 523).

> "The witness will further testify that allotting agent Rankin, accompanied by the said witness as interpreter, went to the home of Mitchell Monette, John Kuhn, Frank Peters, Lot Sailors, William Barada, for the purpose of getting the names and ages of the children, so that if it was determined that they were entitled to allotments that they might receive allotments as other Indian children. They gave in the names and ages of the children. One or two of the families said that Thomas L. Sloan had the description of the lands that they claimed, but they did not give to the allotting agent any description of any land to which they make claim. That they saw Mitchell Monette and he did not make any claim to agent Rankin to the land allotted to Silas Hallowell and William Hallowell de-

scribed in this case, and did not furnish any description of the lands claimed by the Monette family."

What was said by Springer may be applied to all of the cases, for the reason that no one of the complainants testifies to having appeared before the said Rankin and having claimed an allotment of the particular lands in controversy.

Jennie M. Arnold Case. Jennie M. Arnold is a member of the Monette family. In her petition she makes claim to land for herself and for her two children which has been allotted to Bennie Saunsouci and Florence Filson. The only proof to sustain the claim of Jennie M. Arnold is as follows: Thomas L. Sloan makes statement that in the summer of 1891 that his firm of Sloan & Chase "gave to Jennie M. Arnold the proofs of the subdivision of land which she selected for herself and her minor children; that she made the selection by going over the land and having it marked by a furrow plowed around it; that Charles Graves did the plowing and that Mitchell Monette was with Graves at the time when the plowing was done." (Doc. T, 363, Jennie M. Arnold). (Rec. p. 466).

"Thomas L. Sloan further testifies that a part of the N. ½ of the S. ½ of said Section 13 was broke up in the year 1893, and that he, Thomas L. Sloan, has used and farmed the land broke up since the year 1896 for Jennie M. Arnold, but that he, Thomas L. Sloan, has kept all the proceeds arising from the farming of the land except what he may have spent in this litigation and breaking up for farming and holding possession of the same."

Jennie M. Arnold in person has not verified a

pleading, an affidavit, nor given testimony. There is not a word in this case over her signature to indicate that she knows anything about this litigation or claims any interest in it or in the land in controversy.

It does appear, however, from the statement of Thomas L. Sloan that he caused a part of the land to be broken up in 1893. (Rec. p. 466.) In behalf of the defendants, George Lampson, the stepfather of Florence Filson, states, that he selected said land for his step-daughter in the year 1891; that he broke the south 40 acres in 1891, and has used the same since 1891 by leasing the south said 40 acres to different parties since said date. (Rec. p. 467.)

Josiah Fields states that he is the father of Nellie and Nettie Fields to whom has been allotted the land claimed by Jennie M. Arnold in her *amended* bill of complaint, and that he selected the land for his two daughters in the year 1891, and plowed around all of the S. E. ¼ of said Sec. 13, in said year 1891, and that he was the first person to plow around said land. He will further testify that he leased said land to Lamont Hull in 1893, for three years, and will further testify that Jennie M. Arnold never occupied said lands or made any improvements thereon. (Rec. p. 467.)

It is not claimed by anyone that Jennie M. Arnold ever lived upon the land in controversy, or ever made any improvements other than as is contained in the statement of Thomas L. Sloan quoted *supra*. From all the statements it appears that the Field's and Lampson's first claimed the same lands for their children and grandchildren.

Maggie E. Rockwell Case. Maggie E. Rockwell has not given evidence in her own behalf, and so far as appears from anything in this record she has no per-

sonal knowledge of the pending of this litigation. The only thing we know of her is in the stipulation of facts, par. 18, Doc. T. 267. (Rec. p. 339.)

> "Maggie Rockwell nee Peters, daughter of Fulton Peters and his wife Euphrasia, born in 1860, married Edward Rockwell a free born full blood white man, at Verdon, Richardson County, Nebraska. Came to Omaha Reservation first in 1881, again in 1883, and again in 1885, but did not take up a residence on Omaha Reservation and never lived on Omaha Reservation, and have lived in the State of Iowa for about ten years last past. They have children as follows: Rene Rockwell, born 1885. Walter Rockwell, born 1884."

The only evidence in support of the Maggie Rockwell selection is the statement of Thomas L. Sloan as follows: (Doc. T. 509.) (See p. 878).

> "Thomas L. Sloan will testify that he surveyed for the Rockwell's the land claimed by Maggie Rockwell for herself and her children, as described in the pleadings, and that he, Thomas L. Sloan planted 10 bushels of butternuts on the said land, and the land was plowed around in the spring of 1891; that Walter Peters did the plowing for the Rockwell's. He will further testify that the Rockwell's first selected the land in the year 1881, but they have never occupied or improved further than the breaking of 6 or 8 furrows around it, and the planting of butternuts thereon; that the butternuts were tramped out by the cattle and none are growing; that the persons to whom the said lands have been allotted and patents issued, selected the said lands for allotment in

the year 1893. That the land was leased by the Agent for five years to Rosalie Farley and the rent paid to the Agent and disbursed to the tribe. That the lease expired March 1st, 1901, since which time lease has been made by patentees under the act of March 3, 1893."

We submit that the foregoing is not sufficient to show any selection whatever in behalf of Maggie Rockwell, certainly not sufficient to show that she has any priority of claim.

To set out the facts in detail in each case would be burdensome and unnecessary to the question we wish to consider.

The above recitals from the foregoing cases are sufficient to show the realm of conjecture and uncertainty which surrounds the respective claims and selections. A like vagueness and uncertainty will be found in the examination of all the other cases not above mentioned.

Rankin Alloted under the act of 1893. What right have the complainants to complain of the allotments made by Rankin? The selections made by the complainants according to their showing was after the date of the allotments under the act of 1882, by Alice C. Fletcher, to-wit, '83 and '84. Most of the complainants do not assert a selection prior to 1891-3. Rankin's allotments were made under the act of 1893, which did not authorize him to make the allotments provided for under the act of 1882, but only to make the additional allotments (in acres) provided for in the act of 1893.

It the complainants claimed allotments under the act of 1893, as adverse to the present patentees, they should have presented their claims to the said Rankin

and presented proof of priority of selection. But, it appears from the statement of the interpreter, William F. Springer, that the complainants declined to make proof of claim before the said Rankin, and that the said Rankin was obliged to get his information from an inspection of the lands, from an examination of the tract book, and from such other evidence as he could gather.

XIII

The Court Should not set Aside the Allotments Made by Rankin under the Act of 1893, nor the Patents Which Have Been Issued Pursuant thereto.

The Rankin Allotments were not Based on Findings of Law, but upon Findings of Fact Relating to Priority of Selection.

The Department had Adjudged Prior Thereto that Complainants were not Entitled to Allotments on the Omaha Reservation.

(*a*) In certain of the cases by the amended bills there are made defendants certain Indians to whom Rankin had made allotments of lands under the act of 1893. In all said instances patents have been issued by the government and which facts are set out in the general stipulations, filed in the Sloan case T. 174, (Rec. pp. 72-73), Peters case, T. 267, (Rec. pp. 355-357), and Monette case, T. 364, (Rec. pp. 490-1). As between the claimaints Rankin was only charged with the duty of determining priority of selection. He reserved for the complainants in each and every instance the lands upwhich they lived and reported the said reservations to the Indian Department and the lands so reserved

have been marked upon the maps in the office of the Commissioner of Indian Affairs pending the result of these litigations. The allotments made by the said Rankin were reported by him to the Commissioner of Indian Affairs, and were approved by the Commissioner of Indian Affairs and by the Secretary of the Interior and patents issued to the patentees.

The said Rankin in making the allotments and in determining priority of selection went upon the reservation, was in conference with the Indian tribe and different claimants, and obtained such information as was obtainable from the parties and from other sources. (See Springer's testimony quoted *supra*, also his testimony in Philemon H. Frost case, T. 507 and in John M. Sloan case, T. 579.) (Rec. pp. 824, 925).

Springer was the official interpreter for the allotting agent and was present with him at these interviews with the Indians and is well qualified to speak on this question. What Springer has testified to is not contradicted by any witness.

The said Rankin and his official interpreter being present upon the ground could see what improvements, if any, were upon the lands; what evidences there were, if any, indicating a selection, and hence, were much better qualified, in fact, to decide the question of priority of selection, than we can be who listen only to the contradictory statements of interested witnessses and are deprived of the information which comes from actual observation of the lands and improvements.

(*b*) *The official allotments must be presumed to be regular.* The good faith of Rankin in making the allotments is not impeached. No fraud is shown. The allotments made by him are based on findings of fact as to priority and were approved by the Commissioner

of Indian Affairs and the Secretary of the Interior and patents issued. Every presumption of law is that these officers of the government performed their duty faithfully and uprightly, honestly and correctly.

Tecumseh Town Site case, 3 Nebr., 267, 284; *Lessee of Combs, et al., v. Lane*, 4 O. St., 112; *The State, ex rel. Wilson v. Mastin*, 103 Mo., 508; *Snow v. Weeks*, 75 Maine, 105, 107.

In *Insurance Co. v. Wright*, 60 Vt., 515, the court stated the rule thus:

> "That acts which purport to have been done by public officers in their official capacity, and within the scope of their duty, will be presumed to have been regular and in accordance with their authority."

Butler vs. Maples, 9 Wall., 766, is a case where an agent of the United States granted a permit to purchase cotton in the southern states during the war. A question arose as to whether the agent had exceeded his authority or misinterpreted the rules of the Treasury Department, in granting the permit. The court said: (p. 777.)

> "It may be that the grant of the permit was not technically a judicial act, but it was an exercise of the Treasury agent's judgment, and a deduction from the facts known by him, that the region over which the permit extended was within the military lines. It is to be presumed that he acted rightly, and as he could not lawfully grant the permit in the absence of such military occupation, his grant of it raised a presumption that the occupation existed. It establishes at least a *prima facie* case."

(c) *Without proof of fraud the allotments made are*

conclusive. In *Hegler v. Faulkler*, 153 U. S., 109, the court said, p. 115:

> "It is, indeed true that the President speaks and acts through the head of the several departments, in relation to subjects that pertain to their respective duties, and that the allotment of these lands by the Indian Department must be considered as made by the President in pursuance of the terms of the act of Congress and of the treaty. And it may be admitted that the decision of the special Indian agent, in identifying the Indian half-breeds entitled to participate, and in alloting the portion of each, would, in the absence of fraud, be conclusive. *Wilcox v. Jackson*, 13 Pet., 498, 511.

In the case at bar, the direct question was submitted to the Department, whether the present allottees and patentees were entitled to the lands alloted and patented to them, and ruled in their favor, and such action of the Department is final and conclusive, in the absence of fraud. It is also the law that the Interior Department in making the allotments and in determining priority of selection, acts judicially and its judgments like that of other special tribunals is impervious to collateral attack.

In *United States v. Winona, &c., R. R. Co.*, 32 U. S. App., 272, Sanborn, C. J., said, p. 283:

> "The Land Department of the United States, then, including in that term the Secretary of the Interior, the Commissioner of the General Land Office and their subordinate officers, constitutes a special tribunal under these and other provisions of the laws of the United States,

vested with the judicial power to hear and determine the claims of all parties to the public lands which it is authorized to dispose of, and to execute its judgments by conveyances to the parties entitled to them. When a claim under a grant for a railroad company is made to a portion of the public lands under its control, that tribunal must determine whether or not the claimant is the beneficiary of the grant, whether or not it has so far complied with its conditions that it is entitled to its benefits, whether or not the public land claimed is a portion of the grant, and whether or not any other party has a superior right to it. When a claim is made under the homestead or preemption laws for a portion of the public domain that is subject to its disposition, that tribunal must determine whether or not the claimant is qualified to acquire lands under the terms of those laws, whether or not the land claimed was subject to preemption or to entry for a homestead, and whether or not the claimant has so complied with the requirements of those laws as to entitle him to the title to the land.

Similar questions must be heard and determined by that department whenever any portion of the public land subject to disposition by that tribunal is sold or otherwise disposed of in any way. In every case there must, in the nature of things, be a decision of questions of fact and of questions of law, because in every case the ultimate question is whether or not the facts proved show that the claimant is entitled to the land under the acts of Congress. A certificate or patent is the record evidence of the judgment of this tribunal, and

> it necessarily follows that when such a judgment is rendered in a case within the jurisdiction of the Land Department, it is, like the judgments of other special tribunals vested with judicial powers, impervious to collateral attack."

In *King v. McAndrew*, 111 Fed., 860, 864, Sanborn, C. J. said:

> "But land which the department is vested with the power and charged with the duty to hear and decide the claims of applicants for, and to dispose of in accordance with its decision, is within its jurisdiction and its patent of such land conveys the legal title to it, and is impervious to collateral attack, whether its decision is right or wrong."

Judge Sanborn in the last case *supra*, seems to have collated and cited all the authorities bearing upon these questions, and his opinion is a very learned and interesting study.

(*d*) *Fraud and collaterat attack.* We have remarked *supra* that there is no proof of fraud in the allotments made by Rankin. We have also remarked that his findings were upon questions of fact which are not reviewable. The abstract right of the complainants to have allotments, was a question of law *and fact* which had been adjudged against the complainants by the department prior to the allotment under the act of 1893. For the complainants in this proceeding to assail the prior judgments of the Interior Department wherein it was ruled and determined that the complainants were not entitled to allotments of land on the Omaha Reservation, would be *collateral*

attack upon said judgments which is not allowable. (See opinions of Sanborn *supra*.)

Even though this court should be of the opinion that Rankin had made a mistake of fact in the making of the allotments, yet, a simple mistake of fact would not justify a reinvestigation into priority of selection in this judicial proceeding. Independent of any mistake of fact on the part of Rankin, it appearing that the abstract right of the complainants to allotments having been long since adjudged and determined against them, they can have no standing in court in this proceeding, to assail the allotments made by Rankin and the patents which have been issued to the allottees.

XIV

The Complainants had no Preference Right to Select the Lands which They Claim, and Have Not Acquired any Vested Interest in the Lands by Reason of Their Pretended Selection.

The amendatory act of 1893 under which Allotting Agent Rankin allotted the lands which have been patented to the co-defendants, does not contain any provision vesting the Indian or claimants with the right of selection, nor with any right of priority of claim. Under that act the allotments are made by the Secretary of the Interior through an allotting agent of the Interior Department, and the individual Indians are not vested with any control over the allotments. The act of 1893 contains a clause, "that the allotments so made shall be subject to the same conditions, restrictions and limitations provided for in

sections 6, , 8," of the act of August 7, 1882. Six, seven, eight of the act of 1882 do not refer to the selection of the lands by Indians, but what is said upon that point is in section 5 of the act of 1882.

The complainants evidently base their claim upon a pretended selection for allotment under the act of 1882. But whatever selection they pretend to have made under the act of 1882 was not a selection made to an authorized agent of the Department, nor communicated to any authorized agent of the Interior Department, and was not made under and by virtue of a certificate of assignment issued under the provisions of the treaty of 1865, so as to fall within the terms of the provisions of section 5 of the act of 1882. Wherefore, the uncertain and unauthorized selection of lands by the complainants did not carry with it any right or interest in the lands in controversy.

Our point of contention is that the particular Indians have no vested interest in any particular lands on the Reservation so as to entitle them to maintain a suit in equity to compel the Government to allot them such particular lands.

These suits are brought on the theory that each plaintiff has such an ownership in the particular lands in their respective bills of complaint described as entitles them to have a decree that said particular lands shall be allotted to them to the exclusion of other Indians and that the Interior Department has no discretion in the selection of lands in making allotments.

We quote the prayer in one case, which may answer for all on this point:

> "Wherefore your orator shows unto your Honors that he is without adequate remedy at

law and remediless in the premises unless relieved by your Honors in this Court of Equity, and he therefore prays the aid of the Court in the premises, and that the said defendant may appear and answer this, your orator's bill, but without oath, answer under oath being expressly waived. That it be ordered and decreed that your orator is entitled to *have allotted him the lands described more particularly* in this, your orator's bill of complaint, and that the defendant, the United States of America, be ordered and required to make and issue to your orator the patent contemplated and provided by the foregoing treaties and acts of Congress and to recognize in all respects the rights of your orator to and upon the lands so now by him occupied, and that his rights thereto, under and by virtue of the said laws of the United States and treaties, be forever established, and that your orator may have such other and further relief as may be agreeable to equity and good conscience."

Thus it will be seen that the suits are not to establish the tribal relations of the plaintiffs, although that would be a substantive matter of defense in each case, and also an essential element of plaintiff's claim in each case, but the ultimate relief sought goes to the point of a vested interest in the respective lands claimed.

While it may be conceded that the Indians may make selections of land for allotment to them respectively, *such selection is not final* and gives them *no vested interest* until approved by the Secretary of the Interior.

In Sec. 6 of Act of 1882 (22 Stat., 342) it is provided:

"That upon the approval of the allotments provided for in the preceding section by the

Secretary of the Interior he shall cause patents to issue therefor, etc."

Irrespective of the positive provision of the statute *supra* it must necessarily be that the Secretary of the Interior is the final arbiter or tribunal in these matters of selection of lands for allotment, as several individual Indians might wish to select the same lands. It cannot be that where several different Indians select the same lands that each shall have a vested interest in the same lands, based on a mere act of selection.

A preference right to select. There is a provision in section 5 of the act of 1882 which gives an Indian who had lands assigned to him and a certificate issued under article 4 of the treaty of 1865 a "preference right to select" certain land:

> "PROVIDED, That any Indian to whom a tract of land has been assigned and certificate issued, or who was entitled to receive the same, under the provisions of said fourth article and who has made valuable improvements thereon, and any Indian, who, being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract, shall have a preference right to select the tract upon which his improvements are situated for allotment under the provisions of this section.'

The "preference right to select" is confined to the following classes:

a Those to whom land has been assigned and certificate issued under treaty of 1865.

b Those who were entitled to receive such certificate and had made improvements on the land.

c Those who, being entitled to an assignment and

certificate, had settled upon and made valuable improvements upon a tract of land assigned to an Indian, who never occupied or improved such tract.

No one of the plaintiffs falls within either of these classes. They do not aver that the lands which they claim were assigned to them under the treaty of 1865, nor that they had received or were entitled to receive certificates under the treaty of 1865 for the particular lands they claim, nor that they had occupied and had made valuable improvements upon any tract of land which had been assigned to any other Indian under the treaty of 1865, and who had never occupied or improved said tract. It is conceded that no one of complainants holds a certificate of assignment under the treaty of 1865.

Article IV., treaty 1865 (14 Stat., 667), contains the following provisions:

> "There shall be assigned to each head of a family not exceeding one hundred and sixty acres. * * Said division and assignment of lands to the Omahas in severalty shall be made under the direction of the Secretary of the Interior, and when approved by him shall be made final and conclusive. *Certificate* shall be issued by the *Commissioner of Indian Affairs* for the tracts so assigned, specifying the names of the individuals to whom they have been assigned, respectively."

Taking the act of 1882 in conjunction with the treaty of 1865, *supra*, we will notice that even if the plaintiffs had received an assignment under the treaty of 1865, and had received a certificate of such assignment, they would not have a title to the lands in suit, but only a "*preference right to select*." But whereas the plaintiffs did not have, and do not claim to have, an

assignment and certificate for the lands in suit, under the treaty of 1865, they do not have even the "preference right to select," the specific lands in suit.

The "preference right to select" being out of this case on the record, any selection of lands for allotment by the plaintiffs would *not be superior to the selection of the same lands* by any other Indian of the tribe. If the right of selection by the plaintiffs is not a right superior under some provision of the law to the right of selection by other Indians of the same disputed lands, on what theory can the plaintiffs claim decrees in their favor? To maintain a suit for equitable relief the complainant must have a right superior to that of others.

XV

The Complainants do not Have a Vested Right in the Lands Which They Claim.

To Give the Court Jurisdiction to Decree that the Complainants are Entitled to a Particular Allotment of Land, They Must Show That They Have Acquired a Vested Right in the Said Lands.

My point of contention is that the mere occupancy of land with the intention of claiming it by way of allotment, or the mere marking of a tract of land as evidence of intent to select it for allotment, does not constitute such a vested right in the land as will entitle the party to have a decree in a court of equity giving him the particular land or divesting the patentee of the legal title to the same land. All the cases in which the court has sustained jurisdiction to grant equitable relief to the complainant, are cases where the com-

plainant had acquired a vested right to the land in controversy.

In *Johnson v. Towsley*, 13 Wall., 72, the local land office had decided in favor of Towsley, which decision was confirmed by the Commissioner of the general land office and patent issued to Towsley. Subsequently Johnson appealed to the Secretary of the Interior who decided in favor of Johnson, and a patent was issued to Johnson for the same lands.

Towsley filed his bill in equity claiming to have a vested right under the patent first issued to him from the general land office. The court said:

> "So also the register and receiver, to whom the law primarily confides these duties, often hear the application of a party to enter land as a pre-emptor or otherwise, decide in favor of his right, receive his money, and give him a certificate that he is entitled to a patent. Undoubtedly this constitutes a vested right and it can only be divested according to law."

Silver v. Ladd, 7 *Wall.*, 319, is a case where a certificate has been issued under the Oregon Donation Law by the Register and Receiver and set aside by the Commissioner, and it was said the certificate conferred a valid claim to the land and that the patent was issued by mistake to the wrong party.

In *Quinby v. Conlan*, 104 U. S., 420, the plaintiff had occupied the land and filed his declaratory statement in the form required by law, claiming the quarter sectoin as a pre-emption.

Vance v. Burbank, 101 U. S., 514, is a case where Scott settled on land and became a claimant. He notified the Surveyor General of his claim, which was duly entered. The same day he presented the Sur-

veyor General with the proof of his four years of residence and cultivation as required by law and demanded a certificate of proof of compliance with the law and a designation of the land. One Perkins claimed the said land.

Waite, C. J., said :

> "The question in dispute is one of fact, that is to say, whether Scott, when he demanded his patent certificate as against the other contesting claimants, had resided on and cultivated the lands in dispute for four consecutive years, and had otherwise conformed to the requirements of the donation act. This was to be determined by the Land Department and there was a contest, the contending parties were called on in the usual way to make their proofs. They appeared, and full opportunity was given Scott to be heard. He presented his evidence and was beaten, after having taken the case through by successive stages on appeal to the Secretary of the Interior. This, in the absence of fraud, is conclusive on all questions of fact."

We find in the books many other kindred cases. We have not found a case where the privileges of selection, as between rival claimants and the claim of one denied by the Department and the patent issued to the other, has been held to be sufficient foundation for an action in equity to obtain title to the land.

To the contrary, it was ruled in *Maddox v. Burnham*, 156 U. S., 544, that the mere occupation of public lands with the purpose at some subsequent time of entering it for a homestead, gave the party so occupying no rights.

Mr. Justice Brewer said:

> "This claim of the defendant cannot be sustained at the time of these transactions. The mere occupancy of land with the purpose of entering it for a homestead, gave to the party so entering no right."

In *Northern Pacific R. R. Co. v. Colburn*, 164 U. S., 383, it was ruled that no preemption or homestead claim attaches to a tract of public land until an entry in the local land office; and the ruling by the state court that occupation and cultivation by the claimant did create a right is overruled. For other rulings holding that the mere fact of occupancy and cultivation does not create a right in the occupation under the homestead and preemption laws, see the following cases.

Kansas Pacific Railroad v. Dunmeyer, 113 U. S., 629, 644; *Hastings & Dakota Railroad v. Whitney*, 132 U. S., 357; *Whitney v. Taylor*, 158 U. S., 85; *Lansdale v. Daniels*, 100 U. S., 113, 116.

Frank Peters states that in the year 1881 he went temporarily upon the Reservation, put a red stake upon certain lands as an evidence of selection and then returned to the Nemaha Reservation, and that his grandfather at the same time made a similar selection and that they had some conversation with the Indian Agent at said time about said selection. But this cannot avail for two reasons: (1) It was before the act of 1882 was passed providing for allotments. (2) The Indian Agent was not an alloting agent and had no authority in the premises.

It is ruled in *Maddox v. Burnham*, 156 U. S., 544-47, that unauthorized permission by land officer to occupy gives no rights.

XVI

These Actions Cannot be Maintained by Heirs of Deceased Parties.

A Selection of Lands for Allotment Does not Create an Interest on the Land That Will Descend to Heirs.

In Doc. T. No. 174, the suit is prosecuted by John M. Sloan, Artemesia Frost, and Thomas L. Sloan as the heirs at law of Margaret Sloan. In Doc. T. No. 164, the suit is in the name of Mitchell Monette, David Monette, Jennie M. Arnold, and Cassie M. Karch as heirs at law of Mary Monnette. Grant if you please that Margaret Sloan and Mary Monette had made a selection of lands with the view of obtaining an allotment, nevertheless, such selection would not create an inchoate interest in the lands that would descend to their heirs. It is shown by cases cited, *supra*, that the mere occupancy and cultivation of lands does not create a right to or interest in the lands.

At most the occupancy of the land could give nothing more than a preferential right of selection for allotment, but under the law the allotments are made by the Secretary of the Interior acting through the agents of that Department. Certainly the occupant could not acquire an interest in the land which would descend to heirs, until such occupancy and selection had received a recognition by the allotting department of the Government.

Section 6, of the act of 1882 provides that the Secretary of the Interior shall cause "patents to issue therefor in the name of the *allottees*." There is no provision for the issuing of patents to the *heirs* of

allottees, and there is no provision for the making of allotments to the heirs of deceased persons.

This question seems to be settled by the last clause of Section 6 of the act of 1882: "Provided that the law of descent and partition in force in the said state shall apply thereto after patents therefor have been executed and delivered."

The above clause seems to preclude the idea of the laws of descent applying to allotments prior to the issuing of the patents to allottees.

Jno. L. Webster

Solicitor for Defendants.

31298

APPENDIX.

COPIES OF TREATIES AND ACTS OF CONGRESS RELATING TO OMAHA TRIBE OF INDIANS, AND ACT UNDER WHICH THE SUITS ARE BROUGHT.

(7 U. S. St. at Large, p. 328.) TREATY OF 1830.

ARTICLES OF A TREATY.

MADE AND CONCLUDED BY WILLIAM CLARK, SUPERINTENDENT OF INDIAN AFFAIRS, AND WILLOUGHBY MORGAN, COLONEL OF THE UNITED STATES FIRST REGIMENT OF INFANTRY, COMMISSIONERS ON BEHALF OF THE UNITED STATES, ON THE ONE PART, AND THE UNDERSIGNED DEPUTATIONS OF THE CONFEDERATED TRIBES OF THE SAXS AND FOXES; THE MEDAWAH-KANTON, WAHPACOOTA, WAHPETON AND SISSETON BANDS OR TRIBES OF SIOUX; THE OMAHAS, IOWAYS, OTTOES AND MISSOURIAS ON THE OTHER PART.

The said tribes, being anxious to remove all causes which may hereafter create any unfriendly feeling between them, and being also anxious to provide other sources for supplying their wants besides those of hunting, which they are sensible must soon entirely fail them,

agree with the United States on the following articles:

ARTICLE I. The said tribes cede and relinquish to the United States forever all their right and title to the lands lying within the following boundaries, to-wit: Beginning at the upper fork of the Des Moines River, and passing the sources of the Little Sioux and Floyds Rivers to the fork of the first creek which falls into the Big Sioux or Calumet on the east side; thence down said creek and Calumet River to the Missouri River; thence down said Missouri River to the Missouri State line, above the Kansas; thence along said line to the northwest corner of the said State; thence to the highlands between the waters falling into the Missouri and Des Moines, passing to said highlands along the dividing ridge between the forks of the Grand River; thence along said highlands or ridge separating the waters of the Missouri from those of the Des Moines, to a point opposite the source of Boyer River, and thence in a direct line to the upper fork of the Des Moines, the place of beginning. But it is understood that the lands ceded and relinquished by this treaty are to be assigned and allotted under the direction of the president of the United States, to the tribes now living thereon, or to such other tribes as the president may locate thereon for hunting and other purposes.

ARTICLE II. The confederated tribes of the Sacs and Foxes cede and relinquish to the United States forever a tract of country twenty miles in width, from the Mississippi to the Des Moines, situate south, and adjoining the line

between the said confederated tribes of Sacs and Foxes and the Sioux; as established by the second article of the treaty of Prairie du Chien of the nineteenth of August, One Thousand Eight Hundred and Twenty-five.

ARTICLE III. The Medawah-Kanton, Wahpacoota, Wahpeton and Sisseton bands of the Sioux cede and relinquish to the United States forever, a tract of country twenty miles in width, from the Mississippi to the Des Moines River, situate north, and adjoining the line mentioned in the preceding article.

ARTICLE IV. In consideration of the cessions and relinquishments made in the first, second and third article of this treaty, the United States agree to pay to the Sacs three thousand dollars—and to the Foxes three thousand dollars; to the Sioux of the Mississippi two thousand dollars; to the Yancton and Santie bands of Sioux three thousand dollars; to the Omahas two thousand five hundred dollars; to the Ioways two thousand five hundred dollars; to the Otoes and Missourians two thousand five hundred dollars, and to the Sacs of the Missouri River five hundred dollars; to be paid annually for ten successive years at such place or places on the Mississippi or Missouri, as may be most convenient to said tribe, either in money, merchandise or domestic animals, at their option; and when said annuities or any portion of them shall be paid in merchandise, the same is to be delivered to them at the first cost of the goods at St. Louis, free of transportation. And the United States further agree to make to the said tribes and bands, the following allowances for the period of ten

years, and as long thereafter as the president of the United States may think necessary and proper, in addition to the sums hereinbefore stipulated to be paid them; that is to say; To the Bands of the Sioux mentioned in the third article, one blacksmith at the expense of the United States, and the necessary tools; also instruments for agricultural purposes, and iron and steel to the amount of seven hundred dollars; To the Yancton and Santie Bands of Sioux, one blacksmith at the expense of the United States, and the necessary tools, also instruments for agricultural purposes to the amount of four hundred dollars; To the Omahas, one blacksmith at the expense of the United States and the necessary tools, also instruments for agricultural purposes to the amount of five hundred dollars; To the Ioways an assistant blacksmith at the expense of the United States. also instruments for agricultural purposes to the amount of six hundred dollars; To the Ottoes and Missourias one blacksmith at the expense of the United States, and the necessary tools, also instruments for agricultural purposes to the amount of five hundred dollars; and to the Sacs of the Missouri River, one blacksmith at the expense of the United States and the necessary tools, also instruments for agricultural purposes to the amount of two hundred dollars.

ARTICLE V. And the United States further agree to set apart three thousand dollars annually for ten successive years, to be applied in the discretion of the President of the United

31300

States, to the education of the children of the said Tribes and Bands, parties hereto.

ARTICLE VI. The Yancton and Santie Bands of the Sioux not being fully represented, it is agreed, that if they shall sign this Treaty, they shall be considered as parties thereto, and bound by all stipulations.

ARTICLE VII. It is agreed between the parties hereto, that the lines shall be run, and marked as soon as the President of the United States may deem it expedient.

ARTICLE VIII. The United States agree to distribute between the several Tribes, parties hereto, five thousand one hundred and thirty-two dollars worth of merchandise, the receipt whereof, the said Tribes hereby acknowledge; which together with the amounts agreed to be paid, and the allowances in the fourth and fifth articles of this Treaty, shall be considered as a full compensation for the cession and relinquishments herein made.

ARTICLE IX. The Sioux Bands in Council having earnestly solicited that they might have permission to bestow upon the half-breeds of their Nation, the tract of land within the following limits, to-wit; Beginning at a place called the barn, below and near the village of the Red Wing Chief, and running back fifteen miles; thence in a parallel line with Lake Pepin and the Mississippi, about thirty-two miles to a point opposite Beef or O-Boeuf River: thence fifteen miles to the Grand Encampment opposite the river aforesaid; the United States agree to suffer said half-breeds to occupy said tract of country; they holding by the same

title and in the same manner that other Indian titles are held.

ARTICLE X. The Omahas, Ioways and Ottoes for themselves and in behalf of the Yancton and the Santie bands of Sioux, having earnestly requested that they might be permitted to make some provisions for their half-breeds, and particularly that they might bestow upon them the tract of country within the following limits, to-wit: Beginning at the mouth of the Little Ne-mohaw River, and running upthe main channel of said river to a point which will be ten miles from its mouth in a direct line; from thence in a direct line, to strike the Grand Ne-mohaw ten miles above its mouth, in a direct line (the distance between the two Ne-mohaws being about twenty miles); thence down said river to its mouth; thence up, and with the meanders of the Missouri River to the point of beginning it is agreed that the half-breeds of said tribes and bands may be suffered to occupy said tract of land; holding it in the same manner, and by the same title that other Indian titles are held; but the President of the United States may hereafter assign to any of the said half-beeeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section, of six hundred and forty acres to each individual. And this provision shall extend to the cession made by the Sioux in the preceding article.

ARTICLE XI. The reservation of land mentioned in the preceding article having belonged to the Ottoes, and having been exclusively ceded by them; it is agreed that the Omahas,

the Ioways and the Yancton and Santie bands of Sioux shall pay out of their annuities to the said Ottoe tribe, for the period of ten years, three hundred dollars annually; of which sum the Omahas shall pay one hundred dollars, the Ioways one hundred dollars, and the Yancton and Santie bands one hundred dollars.

ARTICLE XII. It is agreed that nothing contained in the foregoing articles shall be so construed as to affect any claim, or right in common, which has heretofore been held by any tribes, parties to this treaty, to any lands not embraced in the cession herein made; but that the same shall be occupied and held by them as heretofore.

ARTICLE XIII. This treaty, or any part thereof, shall take effect and be obligatory upon the contracting parties, so soon as the same shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof.

Done and Signed and sealed at Prairie du Chien, in the Territory of Michigan, this fifteenth day of July, in the year of our Lord One Thousand Eight Hundred and Thirty, and of the Independence of the United States, the fifty-fifth.

WILLIAM CLARK,
Su. In. Affairs,
WILLOUGHBY MORGAN,
Col. 1st. Inft., U. S. A.,
(Commissioners).

(Indian signatures omitted).

Act of July 31, 1854. (10 U. S. Stat., 332).

Sec. 5 (4). And be it further enacted, That the President be, and he is hereby authorized

and required to cause to be fulfilled the stipulations of the ninth and tenth articles of the treaty with the Sacs and Foxes, and other tribes of Indians, concluded on the fifteenth of July, one thousand eight hundred and thirty, by causing said reserved tracts to be surveyed and allotted to the persons properly entitled to the same, in fee simple, in such manner and under such rules and regulations as he may prescribe; and to defray the expenses of the same, there be and is hereby, appropriated the sum of ten thousand nine hundred and twenty-two dollars and twenty-nine cents.

TREATY WITH THE OMAHA INDIANS, March 6, 1865.

U. S. Statutes at Large, Vol. 14, p. 667.

ARTICLE I. The Omaha tribe of Indians do hereby cede, sell and convey to the United States a tract of land from the north side of the present reservation, defined and bounded as follows, viz: Commencing at a point on the Missouri River four miles due south from the north boundary line of said reservation, thence west ten miles thence south four miles, thence west to the western boundary line of the reservation, thence north to the northern boundary line, thence east to the Missouri River, and thence south along the river to the place of the beginning; and that the said Omaha tribe of Indians will vacate and give possession of the lands ceded by this treaty immediately after its ratification. *Provided*, That nothing herein shall be construed to include any of the lands upon which the said Omaha tribe of In-

31302

dians have now improvements, or any land or improvements belonging to, connected with, or used for the benefit of the Mission school now in existence upon the Omaha reservation.

ARTICLE II. In consideration of the foregoing cession, the United States agrees to pay to this said Omaha tribe of Indians the sum of fifty thousand dollars, to be paid upon the ratification of this treaty, and to be expended by their agent, under the direction of the Commissioner of Indian Affairs, for goods, provisions, cattle, horses, construction of buildings, farming implements, breaking up lands, and other improvements on their reservation.

ARTICLE III. In further consideration of the foregoing cession, the United States agree to extend the provisions of article VIII. of the treaty between the Omaha tribe of Indians and the United States, made on the 16th day of March, A. D. 1854, for a term of ten years from and after the ratification of this treaty; and the United States further agree to pay to the said Omaha tribe of Indians, upon the ratification of this treaty, the sum of seven thousand dollars as damages in consequence of the occupancy of a portion of the Omaha reservation not hereby ceded, and use and destruction of timber by the Winnebago tribe of Indians while temporarily residing thereon.

ARTICLE IV. The Omaha Indians being desirous of promoting settled habits of industry and enterprise amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe including their half or mixed

blood relatives now residing with them, to be cultivated and improved for their own individual use and benefit, it is hereby agreed and stipulated that the remaining portion of their present reservation shall be set apart for said purposes; and that out of the same there shall be assigned to each head of a family not exceeding one hundred and sixty acres, and to each male person, eighteen years of age and upwards, without family, not exceeding forty acres of land—to include in every case, as far as practicable, a reasonable proportion of timber; six hundred and forty acres of said lands, embracing and surrounding the present agency improvements, shall also be set apart and appropriated to the occupancy and use of the agency for said Indians. The lands to be so assigned, including those for the use of the agency, shall be in as regular and compact a body as possible, and so as to admit of a distinct and well defined exterior boundary. The whole of the lands, assigned and unassigned, in severalty, shall constitute and be known as the Omaha Reservation, within and over which all laws passed, or which may be passed, by Congress, regulating trade and intercourse with the Indian tribes, shall have full force and effect, and no white person, except such as shall be in the employ of the United States, shall be allowed to reside or go upon any portion of said reservation without the written permission of the Superintendent of Indian Affairs or the agent for the tribe. Said division and assignment of lands to the Omahas in severalty shall be made under the direction of the Secretary of the Interior, and when ap-

proved by him shall be final and conclusive. Certificates shall be issued by the Commissioner of Indian Affairs for the tracts so assigned, specifying the names of the individuals to whom they have been assigned respectively, and that they are for the exclusive use and benefit of themselves, their heirs and descendants; and said tracts shall not be alienated in fee, leased or otherwise disposed of, except to the United States or to other members of the tribe, under such rules and regulations as may be prescribed by the Secretary of the Interior, and they shall be exempt from taxation, levy, sale or forfeiture, unless otherwise provided for by Congress.

ARTICLE V. It being understood that the object of the government in purchasing the land herein described is for the purpose of locating the Winnebago tribe thereon; now, therefore, should their location there prove detrimental to the peace, quiet and harmony of the whites as well as of the two tribes of Indians, then the Omahas shall have the privlege of repurchasing the land herein ceded upon the same terms as they now sell.

In testimony whereof, the said Clark W. Thompson and Robert W. Furnas, Commissioners aforesaid, and the said chiefs and delegates of the Omaha tribe of Indians have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

CLARK W. THOMPSON,
R. W. FURNAS,
Commissioners.

(Indian signatures omitted.)

Act of Aug. 7, 1882. (22 U. S. Stats., 341.)

CHAPTER 434.—An act to provide for the

sale of a part of the Reservation of the Omaha tribe of Indians in the State of Nebraska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That with the consent of the Omaha tribe of Indians, expressed in open council, the Secretary of the Interior be, and he hereby is authorized to cause to be surveyed, if necessary, and sold, all that portion of their Reservation in the State of Nebraska lying west of the right of-way granted by said Indians to the Sioux City & Nebraska Railroad Company under the agreement of April nineteenth, eighteen hundred and eighty, approved by the Acting Secretary of the Interior, July twenty-seven, eighteen hundred and eighty. The said lands shall be appraised in tracts of forty acres each, by three competent commissioners, one of whom shall be selected by the Omaha tribe of Indians, and the other two shall be appointed by the Secretary of the Interior.

Sec. 2. That after the survey and appraisement of said lands the Secretary of the Interior shall be, and he hereby is authorized to issue proclamation to the effect that unallotted lands are open for settlement under such rules and regulations as he may prescribe. That at any time within one year after the date of such proclamation, each *bona fide* settler, occupying any portion of said lands, and having made valuable improvements thereon, or the heirs-at-law of such settler, who is a citizen of the United States, or who has declared his intention to become such, shall be entitled to

purchase, for each, through the United States public landoffice at Neligh, Nebraska, the land so occupied and improved by him, not to exceed one hundred and sixty acres in each case, according to the survey and appraised value of said lands as provided for in section one of this act: *Provided*, That the Secretary of the Interior may dispose of the same upon the following terms as to payments, that is to say one-third of the price of said land to become due and payable one year from the date of entry, one-third in two years, and one-third in three years, from said date, with interest at the rate of five per centum per annum; but in case of default in either of said payments the person thus defaulting for a period of sixty days shall forfeit absolutely his right to the tract which he has purchased and any payment or payments he might have made; *And provided further*, That whenever any person shall under the provisions of this act settle upon a tract containing a fractional excess over one hundred and sixty acres, if the excess is less than forty acres, is contiguous, and results from inability to survey to make township and section lines conform to the boundary lines of the Reservation, his purchase shall not be rejected on account of such excess, but shall be allowed as in other cases; *And provided further*, That no portion of said land shall be sold at less than the appraised value thereof, and in no case for less than two dollars and fifty cents per acre; *And provided further*, That all land in township twenty-four, range seven east, remaining unallotted on the first of June, eighteen hundred and eighty-five, shall be appraised

and sold as other lands under the provisions of this act.

Sec. 3. That the proceeds of such sale, after paying all expenses incident to and necessary for carrying out the provisions of this act, including such clerk hire as the Secretary of the Interior may deem necessary, shall be placed to the credit of said Indians in the treasury of the United States, and shall bear interest at the rate of 5 per centum per annum, which income shall be annually expended for the benefit of said Indians, under the direction of the Secretary of the Interior.

Sec. 4. That when purchasers of said lands have complied with the provisions of this act as to payment, improvement, and so forth, proof thereof shall be received by the local land office at Neligh, Nebraska, and patents shall be issued as in the case of public lands offered for settlement under the homestead and preemption act: *Provided*, That any right in severalty acquired by any Indian under existing treaties shall not be affected by this act.

Sec. 5. That with the consent of said Indians as aforesaid, the Secretary of the Interior be and he is hereby authorized, either through the agent of said tribe or such other person as he may designate, to allot the lands lying east of the right of way granted to the Sioux City and Nebraska Railroad Company, under the agreement of April 19th, 1880, approved by the Acting Secretary of the Interior, July 27th, 1880, in severalty to the Indians of said tribe in quantity as follows: To each head of a family, one-quarter of a section, to each single person over eighteen

years of age, one-eighth of a section; to each orphan child under eighteen years of age, one-eighth of a section, and to each other person under eighteen years of age, one-sixteenth of a section; which allotments shall be deemed and held to be in lieu of allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March 6, 1865, and for which, for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided; *Provided*, That any Indian to whom a tract of land has been assigned, and certificate issued, or who was entitled to receive the same, under the provisions of said fourth article, has settled and who has made valuable improvements thereon, and any Indian who being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract shall have a preference right to select the tract upon which his improvements are situated, for allotment under the provisions of this section; *Provided further*, That all allotments made under the provisions of this section shall be selected by the Indians, heads of families selecting for their minor children, and the agent shall select for each orphan child; after which the certificates issued by the Commissioner of Indian Affairs as aforesaid shall be deemed and held to be null and void.

SEC. 6. That upon the approval of the al-

lotments provided for in the preceeding section by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indians to whom such allotments shall have been made, or in case of his decease, of his heirs according to the laws of the State of Nebraska, and that at the expiration of said period, the United States will convey the same by patent to said Indian or his heir as aforesaid, in fee discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That, the law of descent and partition in force in the said state shall apply thereto after patents therefor have been executed and delivered.

Sec. 7. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of said tribe of Indians shall have the benefit of and be subject to the laws, both civil and criminal, of the State of Nebraska; and said state shall not pass or enforce any law denying any Indian of said tribe the equal protection of the law.

Sec. 8. That the residue of lands lying east of the said right of way of the Sioux

31306

City and Nebraska Railroad, after all allotments have been made, as in the fifth section of this act provided, it shall be patented to the said Omaha tribe of Indians, which patent shall be of the legal effect and declare that the United States does and will hold the land thus patented for a period of twenty-five years in trust for the sole use and benefit of the said Omaha tribe of Indians, and that at the expiration of said period the United States will convey the same by patent to said Omaha tribe of Indians, in fee discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That from the residue of lands thus patented to the tribe in common, allotments shall be made and patented to each Omaha child who may be born prior to the expiration of the time during which it provided that said lands shall be held in trust by the United States, in quantity and upon the same conditions, restrictions, and limitations as are provided in section six of this act, touching patents to allottees therein mentioned. But such conditions, restrictions and limitations shall not extend beyond the expiration of the time expressed in the patent herein authorized to be issued to the tribe in common: *And provided further*, That these patents, when issued, shall override the patent authorized to be issued to the tribe as aforesaid, and shall separate the individual allotment from the lands held in common, which proviso shall be incorporated in the patent issued to the tribe: *Provided*, That said Indians, or any part of them may, if they shall so elect, select the land which shall be allotted to them in sever-

alty in any part of said reservation either east or west of said right of way mentioned in the first section of this act.

Sec. 9. That the Commissioners to be appointed by the Secretary of the Interior under the provisions of this act shall receive compensation for their services at the rate of five dollars for each day actually engaged in the duties herein designated, in addition to the amount paid by them for actual traveling and other necessary expenses.

Sec. 10. That in addition to the purchase, each purchaser of said Omaha Indian lands shall pay two dollars, the same to be retained by the receiver and register of the land office at Neligh, Nebraska, as their fees for services rendered.

Approved August 7, 1882.

Amendatory Act of 1893.

The Indian Appropriation Act, approved March 3, 1893, contains the following provision relative to these Indians.

"That the act of Congress, approved August seventh, eighteen hundred and eighty-two, entitled 'An act to provide for the sale of a part of the reservation of the Omaha tribe of Indians in the State of Nebraska, and for other purposes,' be and the same is hereby amended so as to authorize the Secretary of the Interior, with the consent of the Indians of that tribe, to allot in severalty, through an allotting agent of the Interior Department, to each Indian woman and child of said tribe born since allotments of land were made in severalty to the members thereof under the provisions

of said act, and now living, one-eighth of a section of the residue lands held by that tribe in common, instead of one-sixteenth of a section as therein provided, and to allot in severalty to each allottee under said act, now living, who received only, one-sixteenth of a section thereunder, an additional one-sixteenth of a section of such residue lands: Provided, That the allotments so made shall be subject to the same conditions, restrictions and limitations provided for in sections six, seven and eight of said act touching allotments and patents to allottees therein mentioned: And provided, That the expenses incurred in making the allotments hereby authorized shall be defrayed out of the funds appropriated for surveying and allotting Indian reservations."

Act Conferring Jurisdiction upon the Courts in Allotment Cases.

"An act amending the act of August fifteenth, eighteen hundred and ninety-four, entitled 'An act making appropriations for current and contingent expenses of the Indian Department, and fulfilling treaties and stipulations with various Indian tribes, for the fiscal year ending June thirtieth, eighteen hundred and ninety-five,' and for other purposes:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That that portion of the act of August fifteenth, eighteen hundred and ninety-four found on page three hundred and five of Twenty-eighth Statutes at Large, be amended so as to read as follows:

"That all persons who are in whole or in

part of Indian blood or decent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment of any parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence and prosecute or defend any action, suit or proceeding in relation to their right thereto in the proper circuit court of the United States; and said circuit courts are hereby given jurisdiction to try and determine any action, suit or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty, and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant; and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect when properly certified to the Secretary of the Interior as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands now held by either of the Five Civilized tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases.

"SEC. 2. That the plaintiff shall cause a copy of his petition filed under the preceding section to be served upon the district attorney of the United States in the district wherein suit is

brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit; and within sixty days after the service of petition upon him, unless the time should be extended by order of the court, make in the case to file a plea, answer or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer or defense as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof unless he shall establish the same by proof satisfactory to the court."

Approved February 6, 1901 (31 U. S., Statutes, 760).

31309

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

Nos. 453 to 475.

JOHN M. SLOAN, ET AL., Appellants,

vs.

THE UNITED STATES, ET AL.

Appeals from the Circuit Court of the United States for the District of Nebraska.

DEFENDANT'S BRIEF ON MOTION TO DISMISS APPEALS.

These cases were heard in the United States Circuit Court on the merits and were disposed of on the merits. The appeals were sued out directly to this court on the theory that the said actions involved the validity or construction of certain treaties between the United States and the Omaha tribe of Indians: Whereas, the said several actions are by the respective plaintiffs, claiming the right to an allotment of lands on the Omaha Indian Reservation under the provisions of section 5, of an act of August 7, 1882, (22 U. S., 341.)

The right of the respective plaintiffs to said allot-

ments depends upon questions of fact, to-wit: Whether they were respectively members of the Omaha tribe of Indians residing on said reservation at the time when said act of 1882 was passed. That said respective complainants are not asserting any right under nor claiming any right to an allotment under and by virtue of any treaty.

It is averred in the respective bills of complaint of which one may be taken as an example, (rec. p. 4) that the United States resists the plaintiffs right to an allotment on the ground that the plaintiff was not residing on the Indian Reservation at the date of the treaty of March 6, 1865, within the meaning of the 4th article of said treaty limiting allotments to individual members thereof, including their half-breed and mixed blood relatives now residing with them.

In said bills of complaint it is further averred that the United States resists the plaintiffs right to allotment on the ground that the plaintiff had received an allotment under and by virtue of the 10th article of a treaty of July 15th, 1830. (Rec. p. 5).

The point we make is that the respective plaintiffs are not claiming any right to an allotment under and by virtue of either of said treaties, but aver simply that the United States resists the plaintiffs right to allotment for the reasons aforesaid. That is to say, that the plaintiffs in their bills invoke an adjudication upon the validity or construction of these respective Indian treaties, by anticipating the nature of the defense. To entitle plaintiffs to sue out their bills direct to this court it is necessary as we think that they should assert some right, title, privilege or immunity dependent on said treaties, and that it is not sufficient to

anticipate a defense of that sort which may never be made, and which the court may not find it necessary to pass upon and determine in the cases.

Filhiol v. Maurice, 185 U. S., 108-110.

Muse v. Arlington Hotel Co., 168 U. S., 430-435.

Borgemeyer v. Idler, 159 U. S., 408-414.

Jno. L. Webster

Solicitor for Defendants.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 453, and 22 other cases numbered from 454 to 475, inclusive.

John M. Sloan et al., Appellants, vs. The United States et al. } Appeals from the Circuit Court of the United States for the District of Nebraska.

[April 4, 1904.]

Mr. Justice PECKHAM delivered the opinion of the Court.

These are appeals by the complainants below directly to this court from the Circuit Court of the United States for the District of Nebraska. They were taken under the provisions of the fifth section of the act of March 3, 1891, (1 U. S. Comp. Stat. 549; 26 Stat. 827,) on the ground that the construction of a treaty or treaties of the United States with the Omaha Indians is drawn in question. The actions were brought some time in April, 1901, under the authority of the acts of Congress approved respectively August 15, 1894, and February 6, 1901, permitting persons in whole or in part of Indian blood and claiming to be entitled to an allotment of land under any act of Congress, to commence an action in the proper Circuit Court of the United States for the purpose of maintaining their right to such allotment. (28 Stat. 286, 305; amended, 31 Stat. 760.)

Under the authority of these statutes the complainants have brought these actions to obtain allotments in the reservation of the Omaha Indians. Their right thereto is based upon the act of Congress, chapter 434, approved August 7, 1882, (22 Stat. 342,) the fifth section of which is set forth in the margin.*

*ACT OF 1882.

SEC. 5. That with the consent of said Indians, as aforesaid, the Secretary of the Interior be and he is hereby, authorized, either through the agent of said tribe or such other person as he may designate, to allot the lands lying east of the right of way granted to the Sioux City and Nebraska Railroad Company, under the agreement of April nineteenth, eighteen hundred and eighty, approved by the Acting Secertary of the Interior July twenty-seventh, eighteen hundred and eighty, in severalty to the Indians of said tribe in quantity as follows: To each head of a family, one-quarter of a section; to each single person over eighteen years of age, one-eighth of a section; to each orphan child under eighteen years of age, one-eighth of a section; and to each other person under eighteen years of age, one-sixteenth of a section; which allotments shall be deemed and held to be

By the act approved March 3, 1893, chapter 209, (27 Stat. pp. 612, 630,) the act was amended so as to enlarge somewhat the right to allotments with the consent of the Indians, but the material portion of the act is the original section 5, above quoted.

All of the complainants are of mixed blood, and in their various bills of complaint they insist that they are entitled to allotments under and by virtue of the correct construction of the above act of 1882 and its amendments, and they set up the facts upon which they base their contentions, which included references to the treaties above mentioned. After having stated them, the complainants aver that the defendant, the United States, had theretofore contended that the fourth article of the treaty of March 6, 1865, between the United States and the Indians, confined the right of allotment to the members of the tribe, including their half-breed and mixed blood relatives who were residing with them at the time of the ratification of the treaty, and that neither the complainants nor their ancestors were residing on the reservation at the time, and were therefore not entitled to the land.

Complainants further stated that the United States had also contended that some of the complainants or their ancestors had received allotments of land under and by virtue of the treaty of July 15, 1830, article 10 thereof, and that by the acceptance of such allotments the complainants were not entitled under the statute of 1882 to a second allotment or further participation in the tribal rights of the Omaha tribe of Indians. To these matters of defence the complainants then set up certain facts which they insisted were answers thereto, and that the complainants were therefore entitled under the statute to the allotments claimed by them.

The United States in its answer did make reference to certain treaties it had made with the Omaha Indians. The reference was for the purpose

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in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omahas, concluded March sixth, eighteen hundred and sixty-five, and for which, for the most part, certificates in the names of individual Indians to whom tracts have been assigned, have been issued by the Commissioner of Indian Affairs, as in said article provided: *Provided*, That any Indian to whom a tract of land has been assigned and certificate issued, or who was entitled to receive the same, under the provisions of said fourth article, and who has made valuable improvements thereon, and any Indian who, being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract, shall have a preference right to select the tract upon which his improvements are situated, for allotment under the provisions of this section: *Provided further*, That all allotments made under the provisions of this section shall be selected by the Indians, heads of families selecting for their minor children, and the agent shall select for each orphan child; after which the certificates issued by the Commissioner of Indian Affairs as aforesaid shall be deemed and held to be null and void.

of founding an argument for the construction of the act of 1882, in the manner contended for by it. It urged that the complainants were not entitled to allotments because, among other reasons, they did not reside with the Omaha Indians on their reservation at the time of the ratification of the treaty of 1865; and also that those who had received, or whose ancestors had received, allotments under the treaty of 1830 were not entitled to any further allotment under the act of 1882. The treaties referred to in the answer are the treaty of 1830, (7 Stat. 328, 330, art. 10,) and the treaty of 1865, (14 Stat. 667, art. 4.) The tenth article of the treaty of 1830 is set forth in the margin.*

So much of article 4 of the treaty of 1865 as is material upon the question now under consideration is also set forth in the margin.†

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* TREATY OF 1830.

ARTICLE X. The Omahas, Ioways and Ottoes, for themselves, and in behalf of the Yanckton and Santie bands of Sioux, having earnestly requested that they might be permitted to make some provisions for their half-breeds, and particularly that they might bestow upon them the tract of country within the following limits, to wit: Beginning at the mouth of the Little Ne-mohaw River, and running up the main channel of said river to a point which will be ten miles from its mouth in a direct line; from thence in a direct line to strike the Grand Ne-mohaw ten miles above its mouth, in a direct line (the distance between the two Ne-mohaws being about twenty miles); thence down said river to its mouth; thence up, and with the meanders of the Missouri River to the point of beginning, it is agreed that the half-breeds of said tribes and bands may be suffered to occupy said tract of land; holding it in the same manner and by the same title that other Indian titles are held; but the President of the United States may hereafter assign to any of the said half-breeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section, of six hundred and forty acres to each individual. And this provision shall extend to the cession made by the Sioux in the preceding article.

†TREATY OF 1865.

ARTICLE IV. The Omaha Indians being desirous of promoting settled habits of industry and enterprise amongst themselves by abolishing the tenure in common by which they now hold their lands, and by assigning limited quantities thereof in severalty to the members of the tribe, including their half or mixed blood relatives now residing with them, to be cultivated and improved for their own individual use and benefit, it is hereby agreed and stipulated that the remaining portion of their present reservation shall be set apart for said purposes; and that out of the same there shall be assigned to each head of a family not exceeding one hundred and sixty acres, and to each male person, eighteen years of age and upwards, without family, not exceeding forty acres of land—to include in every case, as far as practicable, a reasonable proportion of timber; six hundred and forty acres of said lands, embracing and surrounding the present agency improvements, shall also be set apart and appropriated to the occupancy and use of the agency for said Indians. . . .

It will be observed that this article of the treaty of 1865 provides for assigning the lands therein mentioned, in severalty, to the members of the tribe, including their half or mixed blood relatives, *now residing with them.* That is, at the date of the treaty.

There is another treaty, that of 1854, between the United States and the Omaha Indians, which it is not necessary to refer to at length. In it the Indians cede to the United States certain lands therein described, and they reserve certain other lands to themselves. The sixth article permits the President to assign at his discretion the whole or such portion of the lands reserved to the Indians as he may think proper, to be surveyed into lots, and to be assigned by the President to such Indians as were willing to avail themselves of the privilege and would locate on the same as a permanent home, subject to the conditions named in the article. The treaty is not material upon the question of the right to appeal directly to this court, hereinafter discussed.

Stipulations in regard to the facts in each case were entered into between the parties and testimony also was given upon the various issues between them. The trial court held that the act of 1882 took the place of all previous acts and treaties providing for allotments of land to the Omaha tribe of Indians, including the half or mixed breeds; that the fundamental question was who, under the terms of the act of 1882, were entitled to allotments; that the rights of the complainants must be adjudged according to the intent of the act of 1882, and that if a person had a right within the terms of that act to an allotment, it could not be denied him simply because he could not be brought within the terms of the treaty of 1865; that the act of 1882 did not restrict the persons to whom allotments were to be made under its provisions to those who resided on the reservation in 1865, but it included all who were in fact members of the tribe, whether of mixed blood or not, residing on the reservation in the tribal relation when the act of 1882 was passed, but such right was not possessed by the mixed bloods, who were not living on the reservation as members of the tribe in 1882; that those of mixed blood who had received allotments under the treaty of 1830 were not entitled to any allotments under th provisions of the act of 1882. (118 Fed. 283; 95 Id. 193.)

The bills were dismissed on the merits in twenty-three out of the twenty-five actions brought in the court below, while the complainants in two of them recovered judgment for an allotment to each. They were Thomas L. Sloan and Garry P. Myers. Sloan was held entitled to an allotment in his own right as an Indian of mixed blood, living on the Omaha reservation at the time of the passage of the act of 1882, although his grandmother, a daughter of a full blood Indian mother, had received an allotment of three hundred and twenty acres in the Nemaha reservation in

1857, under the treaty of 1830. Myers was held entitled as an Indian of mixed blood and a resident of the Omaha reservation in 1882, the contested question being as to the amount of his allotment, whether it should be eighty or one hundred and sixty acres, and he was held entitled to the latter quantity.

The appellee has made a motion to dismiss these appeals on the ground that the court has no jurisdiction to hear them, as they do not fall within any of the provisions of section 5 of the act of March 3, 1891, and because the respective complainants neither assert nor claim any right to an allotment under or by virtue of any treaty, and the validity or construction of a treaty is not drawn in question in these cases. We think the motion should be granted.

The actions do not, in our judgment, involve the construction of any treaty within the meaning of section 5 of the statute of 1891. The complainants in their several bills have based their claims to an allotment upon the act of 1882 and upon the proper construction to be given to its language, which construction, they aver, would recognize their rights to an allotment under the treaties referred to. The United States, in defending against the claims made by the complainants, also relies entirely upon the proper construction of the act of 1882. The construction of a treaty is used only as an argument upon the issue directly in question, viz., the construction of the statute. The alleged right to an allotment being based upon the act of 1882, and the defence being also based upon the proper construction of that act, we cannot but regard the case as one simply resting on such act. The construction of these various treaties was not substantially or in any other than a merely incidental or remote manner drawn in question, and therefore a direct appeal to this court cannot be sustained.

We think the appeals come within the principle of *Muse* v. *Arlington Hotel Company*, (168 U. S. 430;) *Western Union Telegraph Company* v. *Ann Arbor Railway Company*, (178 Id. 239,) and *Lampasas* v. *Bell*, (180 Id. 276,) which hold that where the suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit under the Constitution or laws, and that jurisdiction cannot under such circumstances be maintained of a direct appeal to this court from the Circuit Court.

In *Muse* v. *Arlington Hotel Company*, it was held that some right, title, privilege or immunity dependent upon a treaty must be so set up or claimed as to require the Circuit Court to pass upon the question of the validity or construction of the treaty in disposing of the right asserted. In order to come within the act of 1891 the treaty must be directly involved, and upon its construction the rights of the parties must rest. Within these cases it cannot be said that the construction of any treaty is drawn in ques-

tion herein when the rights of neither party are necessarily dependent upon such construction, but are dependent upon that which may be given the statute of 1882, and when the construction of that statute is independent of that which may be given any of the treaties mentioned, although weight may be given to the treaties in determining the question of the construction of the statute. See also *Starin* v. *New York*, (115 U. S. 248.)

The motion is granted and the appeals

Dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.